



# राजपत्र, हिमाचल प्रदेश

## हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

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मंगलवार, 16 दिसम्बर, 2014 / 25 अग्रहायण, 1936

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हिमाचल प्रदेश सरकार

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

*Shimla-2, the 04<sup>th</sup> December, 2014*

**No. Sharm (A) 6-1/2014 (Awards) Shimla.**—In exercise of the powers vested under section 17(1) of the Industrial Disputes Act, 1947, the Governor Himachal Pradesh is pleased to order the publication of awards of the following cases announced by the Presiding Officer, Labour Court Shimla on the website of the Department of Labour & Employment of the Government of Himachal Pradesh.

Sr. No:	Case No:	Title of the Case	Date of Award
1.	88/2009	S/Shri Bimla Chauhan V/s M.D. H.P. State Elect. Dev. Khalini.	10-09-2014
2.	24/2012	Sh. Narender Thakur V/s M/s Omega Electronic seals & others.	12-09-2014
3.	09/2012	Smt. Sarika V/s M/s Solan energy Saving Products.	11-09-2014
4.	145/2007	Tikhu Ram V/S HPSEB, Solan.	9/9/2014
5.	43/2010	Sh. Krishan Lal V/S M/D M/s Parental Drugs India Nalagarh.	6/9/2014
6.	03/2009	Sh. Dhani Ram V/s DFO Solan.	3/9/2014
7.	04/2009	Sh. Bhoop Ram V/s DFO, Solan.	3/9/2014
8.	12/2014	Sh. Anil Kumar V/s President LTV Union Solan.	24-09-2014
9.	60/2013	Sh. Dharam Singh V/s M/s Hitkari Industrial Ltd. & Others.	23-09-2014
10.	17/2008	Workers Union V/s M/s revere Pentland Ltd. Sirmour.	15-10-2014
11.	18/2014	Sh. Sitar Mohammad V/s Secy. H.P. State Electricity Board Shimla.	13-10-2014
12.	34/2014	Sh. Tej Singh V/s Registrar Maharishi Markandershwar University Kumarhatti.	13-10-2014
13.	14/2010	Sh. Sarwan Kumar V/s G.M. Calchem industries Gondpur.	17-10-2014
14.	41/2013	Smt. Rukmani Devi V/s M/s SPA soaps & Surfactants Kasuali Distt. Solan.	22-10-2014
15.	Oct-12	Sh. Anil Kumar V/S Xen, HPPWD Shimla.	31-10-2014

By order,  
(R. D. DHIMAN),  
*Pr.Secretary ( Labour & Employment).*

**IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-  
CUM-LABOUR COURT, SHIMLA**

Ref No. 88 of 2009.

Instituted on 18.11.2009.

Decided on.10.9.2014.

Bimla Chauhan W/o Shri Attar Singh Chauhan R/o Village & Post Office, Bholar, Tehsil Jubbal, District Shimla, HP.  
*. .Petitioner.*

VS.

The Managing Director, HP State Electronics Development Corporation, Khalini Shimla-2,  
HP. . Respondent.

**Reference under section 10 of the Industrial Disputes Act, 1947.**

For petitioner: Shri Abhishek Sood, Advocate.

For respondent: Shri Rajesh Kumar, Advocate.

**AWARD**

The reference for adjudication, is as under:—

***“Whether termination of services of Smt. Bimla Chauhan W/o Shri Attar Singh Chauhan by the Managing Director, HP State Electronics Development Corporation, Khalini Shimla-2, HP w.e.f. 16.9.1993, without following the provisions of the Industrial Disputes Act, 1947 as alleged by the worker is proper and justified? If not, what relief of service benefits & compensation the aggrieved workman entitled to”?***

2. Briefly, the case of the petitioner is that she got herself registered with Sub Employment Exchange, Jubal for her being matriculate. The Respondent Corporation (hereinafter referred as Corporation), got the names of eligible persons requisitioned from different employment exchanges for imparting training courses, in different trades, including assembly operators, under the “Norwagain Agency for Industrial Development” (NOARD), a centrally sponsored course. In fact, the said course was specifically designed for backward/destitute women for generating self employment. Since, her (petitioner) name had also been sponsored, she appeared for the interview, conducted by the Corporation, on 6.4.1987, and was selected for the course of assembly Operator along-with other candidates. Thereafter, she was asked to report at T.V factory of Corporation at Chambaghat, where she completed the course of assembly Operator w.e.f. 11.5.1987 to 11.5.1988, against a certificate. It is averred that Corporation had offered her job, on daily wages, and she joined as Assembly Operator on 1.6.1988, alongwith some other candidates, who had joined later on, on different dates. From the date of her appointment, she had continued to work, uninterruptedly, with the Corporation till 21.1.1992, when her services were terminated vide letter of even date. Thus, she was not permitted to join her duties after 22.1.1992. It is further averred that at the time of her termination, she had not been paid her wages for 71 days, for the month of Jan., 1992 and that the amount, shown in the termination notice, was not in compliance with the provisions of section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred as Act). As a matter of fact, the said notice was in itself defective as she had not been paid bonus for the years, 1991 and 1992. In order to challenge her termination/retrenchment, she had filed CWP No. 89 of 1993, titled Bimla Chauhan Vs. State of H.P, in the Hon’ble High Court, which was pleased to stay her termination as per order dated 15.1.1993. Thus, she joined her duties as per joining report dated 23.1.1993. Finally, vide order dated 20.8.1993, the Hon’ble High Court disposed of the said writ petition by quashing her termination order dated 21.1.1992. It is further averred that on 16.9.1993, a notice under section 25-F of the Act, was again issued for her retrenchment w.e.f. 16.9.1993. Further, she had not been given three months’ notice under section 25-N of the Act by the respondent, which also did not take prior permission from the appropriate government. Therefore, her retrenchment w.e.f. 16.9.1993, is required to be considered as illegal. Even, she (petitioner) had also challenged order dated 21.1.1992, before Administrative Tribunal, Shimla vide OA No. 447 of 1992, along-with other similar situated employees, by also seeking regularization of her services and that the same was decided on 24.9.2007, with liberty to seek relief before appropriate forum. It is further averred that one Shri Pritamber Dutt, whose services had also been terminated, along with

the petitioner as well as others, had approached the Labour Commissioner, Shimla under section 10 of the Act and in consequence thereof a reference was made to this Court which was decided vide judgment dated 26.7.2000, in their favour. Even, the Corporation had given employment to Ved Prakash and others who were junior to the petitioner, after her termination. Against this back-drop, a prayer has been made for her reinstatement along-with all consequential benefits.

3. The petition has been contested on having raised various preliminary objections including limitation and maintainability. On merits, it has been asserted that as per the provisions of the Act, the services of the petitioner had been rightly retrenched. The services of the persons, as referred to above, were taken in view of the judgment/order passed by this Court. It is further made clear by denying that an order for about 150 TV sets could have sustained a TV Factory having a work force of more than 100 workers. Other allegations denied.

4. By filing rejoinder, the petitioner has reiterated her own allegations by denying those of the respondent.

5. Pleadings of the parties gave rise to the following issues which were struck on 1.4.2010.

1. Whether the termination of services of the petitioner by the respondent is illegal and not justified as alleged? . . . *OPP*.
2. Whether this petition is bad for delay and laches on the part of petitioner? If so, its effect? . . . *OPR*.

6. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

*Issue no.1*      No.

*Issue no.2*      Yes.

*Relief.*              Reference answered against the petitioner, per operative part of award.

### ***Reasons for findings***

#### ***Issue no. 1.***

8. As per the reference, which has been made to this Court, it is required to be ascertained as to whether the services of the petitioner had been terminated w.e.f. 16.9.1993, without following the provisions of the Act. Before, I proceed further, I may like to mention that a demand notice, which is Ex. R-4, had been raised by the petitioner on 17.11.2007. In this notice, she had specifically alleged that without having properly complied with the provisions of section 25-F of the Act, her services were terminated vide notice dated 16.9.1993. It is not the case of the petitioner, as set-out in the demand notice, that her services had been terminated in contravention of the conditions as laid down in section 25-N of the Act. However, during the pendency of the case, the petitioner had got her petition amended and by way of amendment, she also alleged that her termination was illegal because she had not been given three months' notice as required under section 25-N of the At and the Corporation had not taken the prior permission from the appropriate

government. Such plea, which has been subsequently taken, by the petitioner, is not in consonance with her demand notice, Ex. R-4, which resulted in making a reference to this Court by the appropriate government. Moreover, when the facts narrated in the petition are considered, it is revealed that, nowhere, it has been stated that in the respondent factory, where the petitioner used to work, there were more than 100 workers. The counsel for the petitioner, during arguments, had sought to justify that there has been an admission on the part of the Corporation to para no. xxvii, which was not specifically denied. I may mention that as per para no. 19 of the reply, the Corporation has asserted that para no. 1 (xxvi and xxviii) are matter of record. I may like to point out that had there been such allegations, made by the petitioner, that in the factory, where she had been working, there were more than 100 workers/employees, then it was required of the respondent to have specifically denied this fact. Thus, I dis-agree with the learned counsel for the petitioner that the respondent has admitted this fact that Corporation was required to have complied with the provisions of section 25-N of the Act. I may like to say that such contention of the learned counsel is not in consonance with the demand notice (Ex. R-4), which had been raised by petitioner leading to the making of reference to this Court.

9. Now, it is required to be seen, by this Court, as to whether notice dated 16.9.1993, issued by the respondent, under section 25-F of the Act, terminating the services of the petitioner, was in accordance with the provisions of law or not. This demand notice has been exhibited as PH and also R-2, on record. The perusal of this notice goes to show that the services of the petitioner were not required in view of low production, surplus manpower and continuous huge losses faced by the Television Factory, Chambaghat (Solan), a unit of HPSEDC, for the last three/four years. It is further borne out from this notice that the services of the petitioner had stood retrenched w.e.f. 16.9.1993 and she had also been sent demand draft no. OL/C 340131 dated 15.9.1993, amounting to Rs. 12,792/-, on account of retrenchment benefits till 16.9.1993, as per given detail. From the detail, it is further borne out that in lieu of one month's notice, the petitioner was held entitled for wages to the tune of Rs. 4800/-. Her retrenchment compensation was also assessed to the tune of Rs. 1860/-. This goes to show that conditions, as mentioned in section 25-F of the Act, had been complied with before retrenching the services of the petitioner. Even, the petitioner (Pw-1) admitted to have received notice dated 16.9.1993 (Ex. PH), along-with Rs. 12,798/-. Thereafter, her services stood terminated. After having received notice dated 16.9.1993, she did not file any case. The workers, who had been kept/employed by the Corporation were in consequence of the case which was decided in their favour in the year, 2000. At that time, she had not made any representation to the Corporation for reengaging her services. Selfstated that at that time, her case was pending in the Tribunal.

10. Shri Arun Dev (RW-1), in his affidavit, has stated that the services of the petitioner were retrenched after giving her proper notice as required under law. Alongwith that notice, she had been given one month's salary and also retrenchment compensation which was received by her without any objection. The case, which had been field by the petitioner, before Hon'ble High Court, was disposed of vide order dated 20.5.1993, when she was reengaged. Thereafter, after her retrenchment, on 16.9.1993, she, for the first time, raised a demand notice on 19.3.2009, before the Labour-cum- Conciliation Officer, after a lapse of sixteen years.

11. From the evidence, as referred to above, coupled with the admission made by the petitioner (PW-1), it stands duly proved that a notice dated 16.9.1993 (Ex. PH), had been served upon her and along-with the same, she had been sent wages in lieu of one month's notice and retrenchment compensation as well as other benefits. This clearly goes to show that her services had been terminated, on having complied with the requirements of section 25-F of the Act. I dis agree with the learned counsel for the petitioner that since there had been no compliance of the requirements of section 25-N of the Act by the Corporation, the retrenchment of the petitioner w.e.f. 16.9.1993, cannot be said to be in accordance with the provisions of the Act. Already, I have

mentioned above that such plea which has been taken by the petitioner, by getting her petition amended, is contrary to the facts narrated in the demand notice (Ex. R-4). Thus, I hold that the petitioner has failed to prove that her services were terminated by the respondent in illegal and unjustified manner. Resultantly, this issue is answered in negative. **Issue no.2.**

12. Although, the petitioner had been terminated, as per notice dated 16.9.1993 (Ex. PH) but she raised the demand notice, on 19.3.2009, vide Ex. R-4. This goes to show that before the appropriate authority, she had raised her dispute after about 15/16 years. It is true that she (petitioner) had also challenged her earlier termination dated 21.1.1992, before the Hon'ble High Court and that consequent upon the order passed thereto, she was reengaged. Here, I would like to clarify that as per order dated 24.9.2007, passed by the Administrative Tribunal, the photocopy of which is on the case file, it appears that the petitioner had also challenged her termination dated 21.1.1992, before the Administrative Tribunal vide OA No. 447 of 1992, which was got withdrawn with liberty to claim same relief before appropriate forum. Thus, it is abundantly clear that as far as the retrenchment of the petitioner *w.e.f.* 16.9.1993, is concerned, she did not challenge it before any competent forum till 19.3.2009, when she raised a demand notice, copy of which was endorsed to Labour-cum-Conciliation Officer, Shimla (Ex. R-4). In these circumstances, definitely, the petition which has been filed before this Court suffers from delay and laches. Thus, my answer to this issue is in yes.

***Relief.***

As a sequel to my discussion/findings on the aforesaid issues, the claim of the petitioner fails and is hereby dismissed. The reference stands answered accordingly. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 10th September, 2014 in the presence of parties counsels.

(A.S JASWAL),  
*Presiding Judge,*  
*Industrial Tribunal-cum-Labour Court, Shimla.*

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**IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL  
TRIBUNALCUM-LABOUR COURT, SHIMLA CAMP AT SOLAN**

Ref no. 24 of 2012.

Instituted on 14.6.2012.

Decided on.12.9.2014.

Narender Thakur S/o Shri Amar Singh Thakur R/o Village Baran, P.O Dharot, District Solan, HP. *. Petitioner.*

VS.

1. The Factory Manager/Occupier, M/s Omega Electronics Scale Co. Ltd., B-29, Electronics Complex, Chambaghat, District Solan, HP.

2. The Factory Manager/Occupier, Head Office, M/s Omega Electronics Scale Co. Ltd., 27, Tamarind Lane, Rajabahuder Building, Near Mumbai Stock Exchange, Fort Mumbai, 40001. . Respondents.

### Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri J.C Bhardwaj, AR.

For respondent: Already ex-parte.

### AWARD

The reference for adjudication, is as under:—

1. ***“Whether the action of the management i.e i) The Factory Manager/Occupier, M/s Omega Electronics Scale Co. Ltd., B-29, Electronics Complex, Chambaghat, District Solan, HP ii) The Factory Manager/Occupier, Head Office, M/s Omega Electronics Scale Co. Ltd., 27, Tamarind Lane, Rajabahuder Building, Near Mumbai Stock Exchange, Fort Mumbai, 40001 to terminate Shri Narender Thakur S/o Shri Amar Singh Thakur, Village Baran, P.O Dharot, District Solan, HP from services w.e.f. 1.11.2010, without complying with the provisions of sections 25-F, 33(1) (a) and (b) of the Industrial Disputes Act, 1947 is legal and justified? If not, to what amount of back wages, seniority, past service benefits and compensation, the above aggrieved workman is entitled to from the above employer?”***

2. Briefly, the case of the petitioner is that he was engaged, by the respondent company, in the month of March, 2008 and continued to remain, as such, till 1.11.2010, when his services were illegally terminated. In fact, vide order dated 1.11.2010, he had been restrained from attending to his duties. The said order was not speaking one. It is further averred that the workmen of the respondent company had served a demand notice, under section 2-k of the Industrial Disputes Act, 1947 (hereinafter referred as Act) on 4.9.2010, the copy of which was also sent to Labour Department. For necessary conciliation proceedings, notices were sent to the respondent company but during those proceedings, its management remained adamant to consider the demands of the workmen. Even, it (management) had mounted pressure on the workmen to withdraw the said demand notice. Since, the petitioner had not agreed to sign the withdrawal of the demand notice, for this reason, by way of retaliation and also to victimize him, his services were terminated, on 1.11.2010, without any reason/justification. Moreover, when his services were terminated, demand notice dated 4.10.2010, was pending and the respondent company had also not taken express permission, from the competent authority i.e Labour-cum-Conciliation Officer, to dismiss his services. It is further asserted that the petitioner was the main party in the litigation pending before Labour-cum-Conciliation Officer. Before, his termination, he (petitioner) had completed 240 days in the calendar year. Since, neither he was given any notice nor paid retrenchment compensation, his termination was in violation of the provisions of the Act. Against this back-drop, a prayer has been made for his reinstatement along-with all consequential benefits including back wages.

3. Before, I proceed further, it needs to be clarified that on having been served, Shri Pankaj Sharma, Advocate had appeared for the respondent. Various opportunities were given to file reply and that when this case was fixed for 8.7.2013, for filing of reply, on behalf of the respondent none appeared before this Court and as such respondent was proceeded against ex-parte. On 8.11.2013, when the case was fixed for the ex-parte evidence of the petitioner, Shri Sanjeev Kumar, Advocate vice Shri Pankaj Sharma, Advocate appeared before this Court and stated that for getting

set aside the ex parte order, an application was to be filed. Thus, on his such prayer, the case was fixed for 7.12.2013, in order to take necessary steps for getting the ex-parte order set aside. However, on the said date i.e 7.12.2013, again, none appeared for the respondent who had been already proceeded against ex-parte. Thus, the case was fixed for 3.1.2014, for the ex-parte evidence of the petitioner. On the said date (3.1.2014), Shri Pankaj Sharma, Advocate appeared for the respondent and prayed for date by stating that an application for getting set aside ex-parte order was to be filed. Thus, on his such request the case was fixed for 21.2.2014, for taking necessary steps to file the application but on the said date (21.2.2014), none appeared for the respondent and the case was again fixed for the ex parte evidence of the petitioner for 9.5.2014.

4. By way of ex-parte evidence, the petitioner has examined himself as PW-1. Documentary evidence also tendered.

5. Besides having beard the Ld. AR for the petitioner, I have also gone through the record of the case carefully.

6. The petitioner (PW-1), when appeared in the witness box, has supported his case on all material counts including that on 10.3.2008, he was engaged, as helper, in the respondent company and continued to remain as such till 1.10.2010, when his services were terminated without any notice and compensation. Since, the workmen had issued a demand notice Ex. PA, for this reason, his services were terminated as the management was annoyed with him. Even, he had been pressurized to withdraw the demand notice which he refused to do. In every year, he had completed 240 days. After his termination, he is un-employed.

7. On record, the petitioner has brought the copy of demand notice Ex. PA, which the workmen of the respondent company had raised in support of their demands. The contention of the petitioner is that since, he had been pursuing that demand notice and refused to get it withdrawn, when asked by the management, for this reason, the management was annoyed against him and his services were terminated. The petitioner (PW-1) has also specifically stated that before his termination, he had completed 240 days in every calendar year and that neither any notice had been issued to him nor wages in lieu thereof were paid. Even, the respondent company did not pay him the retrenchment compensation.

8. The aforesaid evidence, which has been led by the petitioner, has gone un-challenged. On the basis of this unimpeached evidence, it stands duly proved that in the preceding twelve calendar months, the petitioner had completed 240 days and further that when his services were allegedly terminated, at that time, demand notice Ex. PA, was pending before Labour-cum Conciliation Officer. It is abundantly clear that before terminating the services of the petitioner, no permission had been got obtained from the Conciliation Officer. For the reason that the respondent company had not complied with the provisions of section 25-F of the Act and further that during the pendency of the demand notice, the services of the petitioner had been terminated without seeking permission of the Conciliation Officer, I am of the view that, on this score, his termination w.e.f. 11.1.2010, as per the reference, made to this Court, is required to be held illegal and unjustified. Accordingly, I hold so.

9. Now, the question arises as to what service benefits the petitioner is entitled to. It has been stated by the petitioner that he is un-employed since his termination. His such version has gone un-challenged. Having regard to all the facts and circumstances, I am of the view that he deserves to be reinstated with seniority and continuity along-with back wages @ 50%.



**Relief.**

As a sequel to my discussion/findings, foregoing, the claim of the petitioner is allowed and as such respondents are directed to reinstate the petitioner forthwith, with seniority and continuity along-with back-wages @ 50%. The reference stands answered accordingly. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 11th September, 2014.

(A.S JASWAL),  
*Presiding Judge,*  
*Industrial Tribunal-cum-Labour Court, Shimla.*  
*Camp at Solan.*

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**IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-  
CUM-LABOUR COURT, SHIMLA CAMP AT SOLAN**

Ref. no. 09 of 2012.

Instituted on 24.2.2012

Decided on.11.9.2014.

Sarika W/o Sh. Rajesh R/o Near Sikand Company, Karol Vihar Colony, P.O. Chambaghat,  
Tehsil & District Solan, H.P. *.Petitioner.*

VS

The Managing Director M/s Solan Energy Saving Products (P) ltd. Near HFCL,  
Chambaghat, Tehsil & District Solan, H.P. *.Respondent.*

***Reference under section 10 of the Industrial Disputes Act, 1947.***

*For Petitioner :* Shri J.C Bhardwaj, AR.

*For Respondent:* Shri Pankaj Sharma, Advocate.

Order/award

The reference for adjudication is as under:—

**“Whether the termination of services of Smt, Sarika W/o Shri Rajesh R/o Near Sikand Company, Karol Vihar Colony, P.O Chambaghat, Tehsil & District Solan, HP by the Managing Director M/s Solan Energy Saving Products (P) Ltd., Near HFCL, Chambaghat, Tehsil & District Solan, HP w.e.f. 7.4.2010, without serving her chargesheet, without holding enquiry and without complying with the provisions of the Industrial Disputes, Act, 1947 is proper and justified? If not, to what back wages, service benefits and relief, the above named workman is entitled to from the above employer?”**

2. Briefly, the case of the petitioner is that she was employed by the respondent company during the year, 2007 without having issued any appointment letter. Her services remained continued till 7.4.2010, when those were orally terminated. She had continued to remain in service as per the provision of section 25 B of the Act. Since, at the time of her termination, neither any notice was issued nor she was paid wages in lieu thereof and further that no retrenchment compensation had been paid to her, the same was in violation of the provisions of section 25-F of the Act. The respondent management had also retained and employed person junior to her. In this way, there had also been violation of the provisions of sections 25-G & H. Against this back-drop, a prayer has been made for her reinstatement along-with all consequential benefits.

3. The petition has been contested, on having raised various preliminary objections, including, maintainability as the respondent has not engaged/appointed the petitioner, directly, as its employee. Moreover, as per writing dated 1.12.2010, she had also admitted that she had been working, on contractual basis, under contractor (AKV Services). On merits, it has been asserted that the respondent had contract with Sh. Ajay kumar Verma, sole proprietor of M/s AKV Services and Rakesh Kumar (contractor). Under the contract the respondent company, on settled terms and conditions, had taken the services of several persons. The salaries/wages to said persons were being paid by the contractors. The respondent company had not paid any wages to the workers including the petitioner. Since, the respondent company was not having any work after 15.1.2010, vide letter dated 1.3.2010, it informed the contractors that the services of eight persons were no more required w.e.f. 1.4.2010, onwards. After the receipt of such letter, the contractor had made the payments, of all the dues, payable to the petitioner and other workers/persons. It had been told by the contractor that the petitioner had received full & final payment, whose services were on contract basis. In this way, the respondent company had never remained the employer of the petitioner and as such, this petition against it, deserves to be dismissed.

4. By filing rejoinder, the petitioner has reaffirmed her own allegations by denying those of the respondent.

5. Pleadings of the parties gave rise to the following issues which were struck on 8.7.2013.

1. Whether the termination of the services of the petitioner w.e.f 7.4.2010, without serving chargesheet and holding enquiry is improper and unjustified as alleged?

..OPP.

2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to?

..OPP.

3. Whether this petition is neither competent nor maintainable as alleged?

..OPR.

4. Whether this petition is bad for non-joinder of necessary parties as alleged?

..OPR.

5. Relief:—

6. Before, I proceed further, I may mention that the petitioner, who, after having been afforded opportunities, had filed her affidavit in chief examination, in 5.4.2014, failed to appear before this court for her cross-examination despite the fact that as per order dated 8.8.2014, she had been directed to appear before this Court on 11.9.2014, for her cross examination as last opportunity. In these circumstances, when the petitioner did not appear before this court for cross examination, her affidavit Ex.PA, which she had filed in chief examination, under law cannot be read in evidence. Thus, this court comes to the conclusion that under law, the petitioner has failed

to lead any evidence, in support of her case. When there is no evidence, found to have been led by the petitioner, the counsel for the respondent stated that on behalf of the respondent no evidence is required to be led. Thus, this court proceeds to answer the reference on the basis of the material, whichever, is available before it.

For the reason to be recorded hereinafter, my findings on the aforesaid issues are as under:

*Issue no.1* No  
*Issue no.2* becomes redundant.  
*Issue no.3* No.  
*Issue no.4* No.

8. It has been alleged by the petitioner that her services had been terminated w.e.f 7.4.2010, by the respondent company without serving chargesheet and holding enquiry and also against the provisions of the Act. At the very out-set, I would like to point-out that the petitioner has not brought any document/appointment letter which could go to show that she had been engaged by the respondent company. On the other hand, the defence version is to this effect that the petitioner had been engaged on contract basis by the contractor M/s AKV services and that when her services, along-with other workmen, were not required by the respondent company, the contractor had paid her full & final dues on 7.4.2010. Since, the petitioner as per law, failed to appear before this court, by subjecting herself to be cross-examined, on behalf of the respondent, her affidavit Ex.PA, which she has filed in chief examination, cannot be looked into by this court. In this way, there is no evidence, on record, which could go to show that the services of the petitioner had been directly engaged by the respondent company and that on 7.4.2010, she had been removed/retrrenched by it(respondent) , against the provisions of the Act. In order to succeed in her claim, it was required of the petitioner to have established that she had been engaged by the respondent company and that without holding enquiry or complying with the provisions of the Act, her services were illegally terminated w.e.f. 7.4.2010.

9. Consequently, for what has been stated and observed above, I hold that the petitioner has failed to prove this issue to which my answer is in “no”.

*Issue no.2*

10. For the failure of the petitioner to have proved issue no.1 this issue becomes redundant.

*Issues No. 3&4*

11. Being interlinked, both these issues are taken up together for discussion and Decision.

12. Since, the petitioner had failed to lead evidence, in support of her claim, as per the provisions of the law, no evidence was led on behalf of the respondent, in support of these issues under discussion. Thus, for want of specific evidence, led by the respondent, on these issues, onus of which is upon it(respondent), I have been left with no alternative but to return my findings in negative. Accordingly, my answer to both these issues is in “no”.

### **Relief.**

As a sequel to my discussion/findings, on the aforesaid issues, the claim of the petitioner fails and is hereby dismissed. The reference stands answered accordingly. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 11th September, 2014.

(A.S JASWAL),  
Presiding Judge  
Industrial Tribunal-cum-Labour Court, Shimla  
Camp at Solan.

**IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL  
TRIBUNALCUM- LABOUR COURT, SHIMLA**

Ref no. 145 of 2007

Instituted on 16.11.2007.

Re-registered after remained on 5.12.2012.

Decided on. 9.9.2014.

Tikhu Ram S/o Shri Khayali Ram R/o Village Kiaru, P.O Diggall, Tehsil Nalagarh, District Solan, HP. .Petitioner.

*VS.*

1. The Assistant Executive Engineer, Electrical Sub Division, HPSEB, Ram Shehar, District Solan, HP.

2. The Superintending Engineer, Operation Circle, HPSEB, Solan, District Solan, HP. .Respondents.

**Reference under section 10 of the Industrial Disputes Act, 1947.**

For petitioner: Shri H.S Upadhyay, Advocate.

For respondent: Shri Ramakant Sharma, Advocate.

**AWARD**

The reference for adjudication, is as under:-

***“Whether the termination of services of Tikhu Ram S/o Shri Khayali Ram workman by the (1) Assistant Executive Engineer, Electrical Sub Division, HPSEB, Ram Shehar, District Solan, HP (2) Superintending Engineer, Operation Circle, HPSEB, Solan, District Solan w.e.f. 30.4.1998 without complying with the provisions of the Industrial Disputes Act, 1947 is legally, justified and maintainable? If not, what seniority, back wages, service benefits and relief the concerned workman entitled to”?***

2. Briefly, the case of the petitioner is that he had been engaged, in May, 1986, as daily waged beldar, in section Diggall of the respondent Division and continued to work as such till April, 1998, when his services were illegally terminated. Except for the period, when he was asked by the respondent not to come, for want of availability of the work, he had never absented himself.

Against his illegal termination, he had filed OA no. 2757/1999, which had to be withdrawn for want of jurisdiction with liberty to pursue his remedy before competent forum. Thereafter, he raised an Industrial Dispute which resulted in the making reference to this Court. A prayer has been made for his reinstatement alongwith all the consequential benefits including back wages. Although, in the petition it has not been asserted by the petitioner that his services had been terminated in contravention of the provisions of Industrial Disputes Act, 1947 (hereinafter referred Act) but when regard is given to the reference which has been made to this Court, it appears that he assails his termination *w.e.f.* 30.4.1998, on the ground that the same had been in contravention of the provisions of the Act.

3. The petition has been contested on having raised preliminary objections including maintainability. On merits, it has been asserted that the petitioner had joined the services of the Board *w.e.f.* 29.5.1986 but he had been in the habit of remaining absent from duties without any sanctioned leave. For this reason, he could not complete 240 days in calendar years except 1987 and 1988. It has been specifically denied that his services were terminated by the respondent *w.e.f.* 30.4.1998. As a matter of fact, he had abandoned the job. Other allegations denied.

4. By filing rejoinder, the petitioner has reiterated his own allegations by denying those of the respondent.

5. Pleadings of the parties gave rise to the following issues which were struck on 12.8.2009.

3. Whether the termination of services of Shri Tikhu Ram petitioner by the respondents *w.e.f.* 30.4.1998 without complying the provisions of the Industrial Disputes Act, 1947 is illegal, unjustified and not maintainable as alleged? . .*OPP.*

4. If issue no.1 is proved, to what seniority, back wages, service benefits and relief, the petitioner is entitled to? . .*OPP.*

5. Whether the claim is not maintainable in the present form? . .*OPR.*

6. Whether the petitioner has lost his lien over the job as alleged? . .*OPR.*

6. Before, I proceed further, I may mention that vide award dated 4.9.2020, passed by this Court, the claim of the petitioner was dismissed. However, the award passed by this Court, was assailed by the petitioner by filing CWP No. 659 of 2011- 1, before the Hon'ble High Court. As per order dated 24.9.2012, of the Hon'ble High Court, the impugned award was set-aside and the case was remanded to this Court with the direction to frame issue regarding the question of abandonment of job by the petitioner. In this way, when the case was received, in this Court, after remand, as per the directions of the Hon'ble High Court, an additional issue was framed, on 27.4.2013, which reads as under:

4-A. Whether the petitioner abandoned the job at his own in 1998? If so, its effect?

. .*OPR.*

### **Relief:**

7. Both the parties were allowed to lead their evidence in support of the additional issue, framed by this Court on 27.4.2013. Whereas the respondent examined Shri Prem Dass kaushal (RW-1), in support of additional issue on 27.7.2013, the petitioner examined himself as PW-1 on 1.4.2014, in order to rebut the evidence led by the respondent.

8. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

9. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue no.1 Yes accordingly.

*Issue no.2* Entitled to reinstatement as afresh i.e from the date of passing of award.

*Issue no.3* No.

*Issue no.4.* No.

*Issue no. 4-A* No.

*Relief.* Reference answered partly allowed in favour of the petitioner, per operative part of award.

### ***Reasons for findings.***

#### ***Issue no.4-A***

10. First of all, I proceed to take issue no.4-A, which has been framed on the directions of the Hon'ble High Court. The contention of the petitioner is to this effect that the services of the petitioner had not been dis-engaged/dismissed but on his own, he had abandoned the job.

11. Shri Prem Das Kaushal (RW-1), who was examined on 27.7.2013, after the remand of the case, has stated that the petitioner was engaged, as daily waged beldar, in the year 1986 and till 1998, he worked with the respondent. He (petitioner) had not worked for 240 days in any year except 1987 and 1988. On his own, he had left the job. In the cross-examination, he stated that there is no such document, available on record, which could go to show that the petitioner had left the job, on his own.

12. According to petitioner (PW-1) when he appeared in the witness box, on 1.4.2014, his services had been dis-engaged in the year, 1998, without notice. He had never refused to join work. Before, HP Administrative Tribunal, he had filed OA No. 2757 of 1999, regarding his termination, the copy of which is Ex. P-1. Letters are Ex. P-2 to Ex. P-5, in respect of his being called for work. In the cross-examination, he denied that in the year, 1998, he, on his own, had left the job.

13. I may like to observe that it is for the respondent to prove with satisfactory and cogent evidence that the petitioner had left the job, in the year, 1998. Except the bald statement of Shri Prem Dass Kaushal (RW-1), there is no other evidence which could go to show that the petitioner, on his own, had left the job. However, when the evidence of Shri Prem Dass Kaushal (RW-1), is gone-through minutely, it is revealed that even he fails to justify his such version that the petitioner, on his own, had left the job, from any document, available on the records. Here, I may mention that if the petitioner had left the job, on his own, in the year, 1998, it was required of the respondent to have issued him notice to join the job. On the contrary, it has been specifically stated by the petitioner (PW- 1) that his services had been terminated in the year, 1998, without issuing notice and paying retrenchment compensation and that on his own, he had not left the job.

14. In this way, from the evidence, which has been discussed above, I, without hesitation, hold that the respondent has failed to prove that the petitioner, on his own, had abandoned the job. Thus, my answer to this issue is in “no”.

#### **Issue no. 1.**

15. When the petitioner had examined himself, on 16.3.2010, as PW-1, in support of his case, he stated that in the month of May, 1986, he had been engaged, as beldar, on daily wage and continued to remain as such till April, 1998. He had completed 240 days in every calendar year preceding his termination. From time to time, he used to be given intentional/fictional breaks by the respondent. w.e.f 30.4.1998, his services were terminated orally. He had filed a case before the Administrative Tribunal which was dismissed for want of jurisdiction. He had never left the job. In the cross examination, he denied to have abandoned his job and not to have completed 240 days in twelve calendar months preceding his termination.

16. Shri Prem Dass (RW-1), when appeared in the witness box on 30.7.2010, has stated that the petitioner had worked as daily waged beldar from 26.5.1986 till 21.4.1998. Only in the years 1987 & 1988, he had completed 240 days. He had left the job, on his own. In the cross examination, he has stated that after 1998, no notice had been issued to the petitioner to resume his job/duties. He admitted that when the services of the petitioner had been disengaged, in the year 1998, neither any notice was issued nor he was paid compensation. He denied that the services of the petitioner had been terminated illegally. The respondent has also tendered, in evidence, the mandays chart of the petitioner, which Ex. R-1 (objected to).

17. It is quite clear from the evidence, on record, that when the services of the petitioner were allegedly dis-engaged/terminated w.e.f. 30.4.1998, he had filed a case (OA No. 2757/1999), before the Administrative Tribunal, the copy of which is Ex. P-1. I may mention that if the services of the petitioner had not been disengaged by the respondent, in the year, 1998, there was no occasion for him to have filed said OA, before the Administrative Tribunal. It is true that the petitioner has not caused to get produced any record before this Court in order to show that before his termination, he had been completing 240 working days, in each calendar year, despite the fact that onus to prove, such fact, was upon him but still I am of the view that from the copy of mandays chart, Ex. R-1, which has been tendered, in evidence, on behalf of the respondent, this Court can see as to whether the petitioner had been completing 240 days before his alleged termination or not. From this document, it is revealed that in the year, 1986, the petitioner had worked for 216 days, 1987, 337, 1988, 337, 1989, 149, 1990, 118, 1991, 109, 1992, 68, 1993, 71, 1994, 94, 1995, 53, 1996, 67, 1997, 10 and 1998, 9 days. Here, I would like to point-out that as per the version of the petitioner (PW-1), he used to be given fictional breaks by the respondent, from time to time. His such version gets support from the copies of letters Ex. P-4 and Ex. P-5, which go to show that the persons named in those letters, including the petitioner, were intimated that due to non-availability of work, they could not be kept in job and as & when the work would be available, they would be again called for job. In my view, since, from Ex. R-1, it is revealed that the petitioner had completed more than 240 days in the years, 1987 (337) and 1988 (337), the same can be said to be sufficient compliance of section 25-B of the Act. It has been held by the Hon'ble Supreme Court in *Shriram Industrial Enterprises Ltd. Vs. Mahak singh and others*, (2007) 4 Supreme Court Cases 94 that:-

**“The exclusion of the word preceding from section 2(g) of the U.P Act indicates that a workman in order to be in continuous service may have worked continuously for a period of 240 days in any calendar year during his period of service.”**

18. Consequently, the alleged termination of the services of the petitioner w.e.f. 30.4.1998, is required to be held in contravention of section 25-F of the Act because the respondent had neither issued any notice nor paid wages in lieu thereof to him. Apart from this, the petitioner was

also not paid any retrenchment compensation. Thus, my answer to this issue is in “yes” accordingly.

***Issue no.2.***

19. I would like to observe that although the services of the petitioner were allegedly terminated on 30.4.1998 but he raised the demand notice only in the year, 2006 (5.3.2006). On the record, the petitioner has not brought the copy of order, passed by the administrative Tribunal in OA No. 2757 of 1999, whereby, his petition was dismissed for want of jurisdiction. This goes to show that after a considerable period of time, the petitioner had raised demand notice which resulted in making a reference to this Court by the appropriate government. I may also like to observe that although the petitioner had worked from 1986 till 30.4.1998 but except the years, 1987 and 1988, he had not completed 240 days. The respondent has alleged, in its reply, that from the very beginning, the petitioner used to create problems by remaining absent from work. This assertion of the respondent gets substantiated, to some extent, from mandays chart Ex. R- 1, which goes to show that for most of the years i.e 1986, (216), 1989, (149), 1990, (118), 1991, (109), 1992, (68), 1993, (71), 1994, (94), 1995, (53), 1996, (67), 1997, (10) and 1998, (9), the petitioner had worked for only few days. In this way, having regard to all the facts and circumstances of the case, I am of the view that the petitioner can be held entitled for reinstatement only, from the date of award and not earlier. By holding so, my answer to this issue is in yes accordingly.

***Issue no.3***

20. Consequent upon the receipt of reference, in this Court, from the appropriate government, the petitioner had filed his statement of claim. Thus, it cannot be said that his such claim is not legally maintainable. By holding it to be maintainable, my answer to this issue is in “no”.

***Issue no.4***

21. To prove this issue, no specific evidence has been led by the respondent. Moreover, at the time of arguments, it could not be explained as to how and in which manner, the petitioner has lost his lien over the job. Thus, for want of evidence, this issue is not proved to which my answer is in “no”.

***Relief.***

As a sequel to my discussion/findings on the aforesaid issues, the claim of the petitioner is partly allowed and as such the respondent is directed to reinstate him as daily waged beldar, from the date of award without previous seniority and continuity. The reference stands answered accordingly. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 9th September, 2014 in the presence of parties counsels.

(A.S JASWAL),  
Presiding Judge,  
Industrial Tribunal-cum-Labour Court, Shimla.



**IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL  
CUMLABOUR COURT, SHIMLA, (H.P).**

Ref no. 43 of 2010.

Instituted on. 12.4.2010.

Decided on 6.9.2014.

Krishan Lal S/o Shri Dalip Singh C/o Satish Kumar, President, HP AITUC, Area Committee, BBN H.Q, House No. 276, Phase –III, Housing Board, Baddi, District Solan, HP.

. .Petitioner.

Vs.

The Managing Director M/s Parental Drugs India Ltd., Village Bhud, Tehsil Nalagarh, District Solan, HP.

. .Respondent.

**Reference under section 10 of the Industrial Disputes Act, 1947.**

**For petitioner :** Shri J.C Bhardwaj, AR.

**For respondent :** Shri Vijay Arora, Advocate.

**AWARD**

The reference for, adjudication, is as under;

***“Whether termination of the services of Shri Krishan Lal S/o Shri Dalip Singh workman by the Managing Director M/s Parental Drugs India Ltd., Village Bhud, Tehsil Nalagarh, District Solan, HP vide letter dated 5.4.2009, without serving him notice of absenteeism, enquiry to so called abandonment is legal and justified? If not, to what back wages, service benefits and relief the above named workman is entitled to?”***

2. In nutshell, the case of the petitioner is that he was employed, as Machine Operator, by the respondent company, in the month of April, 2007 and continued to work, as such, till 26.2.2009, when his services were illegally terminated without any cogent reason/justification. In fact, on 23.2.2009, he had fallen ill and as such remained under treatment at ESI Hospital Baddi. On 25.2.2009, he was declared fit to join duties and as such reported for duties, on 26.2.2009, but was not allowed to resume the same. Even, thereafter, he had kept on visiting the factory but of no avail. Such act of the management of the respondent company, in not allowing him to enter the gate of the factory, amounted to unfair labour practice. During his service, he had been completing 240 days in each calendar year including twelve calendar months preceding his termination on 26.2.2009. Since, he had attained the status of permanent workman, he was entitled for the protections as per the Labour laws. Apart from this, his juniors were also retained by the respondent company. Thus, his alleged oral termination is in violation of the provisions of section 25-F, 25-G and 25-H of the Act. After his termination, he has not been employed anywhere. Against this back drop, a prayer has been made for reinstating him along-with all consequential service benefits including back-wages.

3. The petition has been contested on having raised preliminary objection qua maintainability. On merits, it has been asserted that the petitioner had himself absented from joining his duties for a considerable period. Only, on 23.2.2009, he had joined the factory.

Although, at that time, he had intimated to have taken treatment under ESIC, but failed to produce any records, in this regard, issued by the Doctor of ESI. It is further maintained that the petitioner had remained absent, in the month of November, 2008, from 18th to 27th, December, 2008, from 2nd to 4th and then again on 11.12.2008. In the month of Jan., 2009, he had absented from 15th to 23rd and in the month of Feb., 2009 from 13th to 16th and also on 23rd without any prior intimation. Although, the management of the respondent company had many times requested to him to join the duties but despite that, he absented. When, the petitioner had not joined his duties, after having remained absent for a considerable period, then, the respondent sent a letter to him through registered post with AD, with the request to join his duties and to explain why he had not come to the factory during his absenteeism. Despite this, the petitioner had failed to join his duties. Again, he was sent two letters, vide registered AD, at his permanent address, available with the management, asking him to explain why he had not come to the factory during the period, he remained absent and further to submit relevant documents in this regard. It has been denied that he had completed 240 days in terms of provisions of section 25-B of the Act. Even, during conciliation proceedings, the petitioner had been asked by the respondent either to join duties or to take full & final settlement but he refused the same. Thus, again, he was sent a letter dated 11.7.2009, through registered post with AD to join his duties but neither he joined nor filed any reply. In this way, he had abandoned his job. It has been denied that there has been violation of the provisions of the Act, as alleged.

4. By filing rejoinder, the petitioner has reaffirmed his own allegations by denying those of the respondents.

5. On the pleadings of the parties, following issues were struck on 9.5.2011.

1. Whether the termination of services of Shri Krishan Lal by the Managing Director M/s Parental Drugs Ltd., Nalagarh w.e.f. 5.4.2009 is in violation of the provisions of Industrial Disputes Act? . . . *OPP*.

2. If issue no.1 is proved in affirmative, to what relief the petitioner is entitled to? . . . *OPP*.

3. Relief.

6. I have heard the Ld Counsel for the parties and have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no.1 Accordingly in yes.

Issue no.2 Entitled to reinstatement with seniority and continuity but without back-wages.

Relief. Reference answered in favour of the petitioner, per operative part of award.

### ***Reasons for findings***

#### ***Issue no.1.***

8. Although, the contention of the petitioner is that on 26.2.2009, his services were illegally terminated as he was not allowed to resume his duties, after he was declared fit to join his duties, but the defence version is that he had abandoned his job. It has also been asserted by the

respondent that the petitioner had been a habitual absentee and did not join his duties despite having been sent letters to do so.

9. The petitioner (PW-1), in his affidavit has supported his case, on all material particulars including that when he was declared fit to join duties on 25.2.2009, by the Doctor of ESI Hospital, Baddi, and in consequence thereof reported for duties w.e.f. 26.2.2009, the respondent did not allow him to resume his duties and as such his services were orally terminated. Thereafter, he had kept on visiting the factory but his entry was not allowed inside the gate. In each calendar year, he had been completing 240 days including twelve calendar months preceding his termination, on 26.2.2009. The respondent had neither served upon him one month's notice nor paid in lieu thereof. He was also not paid retrenchment compensation. The documents, which he has referred, in his affidavit, are Ex. P-1 to Ex. P-4. In the cross-examination, he stated that at the time of his joining, on 26.2.2009, he had filled ESI Form. ESI prescription slip Ex. P-1, is dated 20.8.2008 to 2.12.2008. The copy of ESI certificate for the period 20.11.2008 to 1.12.2008 bears date 20.11.2008 or 20.12.2008. Regarding filing these documents with the respondent company, he had not got obtained the receipt. He denied that no medical certificate of 2009, had been filed by him with the respondent company. Self-stated that it is Ex. P-3. He denied to have remained absent without intimation to the company from 18.12.2008 to 27.12.2008 and also on 2.12.2008, 4.12.2008 and 11.12.2008 and further from 15.1.2009 to 23.1.2009 and also from 13.2.2009 to 16.2.2009 and from 23.2.2009 to till date. He further denied that numerous letters had been sent to him by the company to join his duties. There is further denial that the company had also sent him letters from 5.7.2009 to 11.7.2009, to join duties. Further, denied to have abandoned his job.

10. Shri Aditya Sharma (RW-1), in his affidavit Ex. PW-1/A, has supported the defence version on all material counts including that the petitioner used to remain absent without prior intimation and that he abandoned his job. The respondent company had sent letters to the petitioner through registered post for joining the duties. Letters dated 9.3.2009, is mark X, 5.9.2009, mark Y and 11.7.2009, mark Z, the postal receipt of which are Ex. RW-1/B and Ex. RW-1/C. The registered letter which had been received back is Ex. RW-1/D. In the cross-examination, he stated that on the basis of mark X, mark Y and mark Z- 1 to mark Z-3, no enquiry was got conducted. The letters had been sent on the permanent address of the petitioner. When, those had been received back, no further action was taken. He has no proof as to where the petitioner, at present, is working and getting Rs. 10,000/- per month. He denied that to the petitioner, false letters had been written. No compensation had been paid to the petitioner. The letters had not been written in his presence because at that time, he was not in the job of the company.

11. I may like to mention that as per the case of the petitioner, he had not been allowed to resume his duties on 26.2.2009, when he recovered from his illness which prevented him from not joining the duties from 23.2.2008 and for which, he had taken treatment from ESI Hospital Baddi. Although, the defence plea is that the petitioner had been in the habit of remaining absent, without prior intimation, and in this regard, various dates have been mentioned but in my view, such plea of the respondent company is not relevant as far as the decision of the present case is concerned. Since, a specific plea has been taken by the respondent that the petitioner had abandoned his job and that he had not turned up to resume the same despite having been sent several letters, for this reason, the respondent is required to prove with cogent and satisfactory evidence that in fact, the petitioner himself had abandoned the job and that his services had not been orally terminated. I may mention that the petitioner has brought, on record, Ex. P-1 to Ex. P-4, in support of his contention that he had remained under treatment at ESI Hospital Baddi. The petitioner (Pw-1) has also stated that in each calendar year, he had been completing 240 days. The evidence of Shri Aditya Sharma (RW-1), goes to show that no enquiry had been got conducted against the petitioner when he failed to resume his duties despite having been sent letters. First of all, I may like to point-out that the respondent has not been able to prove that the letters which had been sent to the petitioner were

received by him. Moreover, if the petitioner had not joined his duties, despite having been sent letters to do the needful, his such acts amounted to misconduct. Thus, it was required of the respondent to have got proved the misconduct of the petitioner by holding an enquiry. Since, the petitioner had been completing 240 days in each calendar year and that he was not a daily wager, it was obligatory upon the respondent to have got conducted an enquiry against the petitioner in respect of the alleged misconduct of willful absenteeism before terminating his services. I may reiterate that from the evidence of Shri Aditya Sharma (RW-1), it has not been proved that the petitioner had abandoned his job. On the contrary, there is sufficient medical evidence, which goes to show that on account of his illness, the petitioner had to remain absent. In the instant case, before terminating the services of the petitioner neither any notice was issued to him nor salary in lieu thereof was paid. He was also not paid retrenchment compensation. Thus, without having followed the provisions of section 25-F of the Act, the services of the petitioner had been terminated.

12. The Hon'ble Apex Court in **State of UP and another Vs. Rajendra Singh Butola and another, 2000 LLR 523**, has held that : **"Where the services of daily wager cleaner on motor truck who had worked for four years had been dispensed with without following the procedure for retrenchment, his termination order was required to be set aside."** In **Nar Singh Pal Vs. Union of India and others, 2000 LLR 577**, it had been held by the Hon'ble Apex Court, that : **"Once an employee attains the temporary status he becomes entitled to certain benefits one of which is that he becomes entitled to the constitutional protection if an order had been passed by way of punishment and was punitive in nature, it was the duty of the respondents to hold a regular departmental enquiry and they could not have terminated the services of the applicant arbitrarily by paying him the retrenchment compensation."**

13. The case laws (Supra) also go to show that if the services of the petitioner were to be terminated on the ground of absenteeism, an enquiry was required to be held. In the instant case, since, the respondent had neither held any enquiry against the petitioner nor the requirements of section 25-F were complied with, I am of the firm view that his termination is not legal and justified. Thus, my answer to this issue is in "yes" accordingly.

## **Issue no.2.**

14. Now, the question arises as to what relief the petitioner is entitled to. Ld. Counsel for the petitioner has urged that the petitioner is required to be reinstated, along-with all the service benefits including full back wages. On the other hand, the contention advanced on behalf of the respondent is that having regard to all the facts and circumstances, the petitioner should not be ordered to be reinstated but in lieu thereof, he should be paid compensation. As per the case of the petitioner, he had been engaged in the month of April, 2007, as machine operator and continued till 26.2.2009, when his services were illegally retrenched. This goes to show that for less than two years, the petitioner had worked with the respondent company. Having regard to this aspect of the matter, I am of the view that without allowing back-wages, he should be ordered to be reinstated with seniority and continuity in service. Moreover, *it has been held by the Hon'ble Supreme Court in 2010 (1) SLJ S.C 70, M/s Ritu Marbals Vs. Prabhakant Shukla* that **"full back wages cannot be granted mechanically, upon an order of termination be declared illegal. It is further held that reinstatement must not be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry"**.

Keeping in view, the law laid down (Supra), I without hesitation hold that the petitioner is entitled for reinstatement with seniority and continuity but without back-wages and as such my answer to this issue is in "yes" accordingly.

## **Relief.**

As a sequel to my above findings/discussion, the claim of the petitioner is allowed and as such the respondent is directed to reinstate the petitioner, in service, forthwith with seniority and continuity but without back-wages. The reference stands answered accordingly. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 6th day of September, 2014.

(A.S. JASWAL),  
Presiding Judge,  
Industrial Tribunal-cum-Labour Court, Shimla.

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**IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL  
TRIBUNALCUM- LABOUR COURT, SHIMLA**

Ref no. 3 of 2009.

Instituted on 16.1.2009.

Decided on 3.9.2014.

Dhani Ram S/o Shri Nikku Ram R/o Village Katal, P.O Shalaghat, Tehsil Arki, District Solan, HP. . *Petitioner.*

*VS.*

1. The Divisional Forest Officer, Kunihar, Tehsil Arki, District Solan, HP.
2. Chief Conservatory of Forests, Talland Shimla, HP. . *Respondents.*

**Reference under section 10 of the Industrial Disputes Act, 1947.**

*For petitioner:* Shri O.P Chauhan, Advocate.

*For respondents:* Shri Surender Negi, Dy. DA.

**AWARD**

The reference for adjudication, is as under:

***“Whether the demand notice dated 4.9.2006, raised by the President Bhartiya Mazdoor Sangh, HP, Shimla on behalf of Shri Dhani Ram S/o Shri Nikku Ram daily wage workman, regarding his regularization in service w.e.f. 1.4.1994, before the Divisional Forest Officer, Kunihar, District Solan, HP is legal and justified? If yes, to what seniority, service benefits and relief Shri Dhani Ram workman is entitled to?”***

2. Briefly, the case of the petitioner is that w.e.f. 1.1.1984 to 31.12.1993, he had worked as daily waged Mali at Forest Range Shalaghat in Kunihar Division of the respondent. However, in the month of Feb., 1994, his services were terminated by saying that there was no work available in the Nursery. After the lapse of two months, he was again kept, on duties, on 25.5.1994. Thereafter,

again his services were terminated on 12.12.1994. Thus, he had to file an application before the Administrative Tribunal which came to be registered as OA No. 3173 of 1994 titled as Dhani Ram Vs. State of HP and anr., in which the Ld. Tribunal had granted stay and ordered to reengage him. Since, then, he has been working with the respondent department. Thereafter, Ld. Tribunal returned his application by making an observation that it has got no jurisdiction to decide the same and accordingly, he (petitioner) was directed to approach the appropriate forum. It is averred that since he had raised his voice against the Forest Guard, who used to take extra work from him, in his house, for this reason, his services had been orally terminated in the month of Feb., 1994 by telling that there was no work in the Nursery. In fact, after his removal, from service, the respondent department had kept new persons in his place. On 3.8.2006, he (petitioner) had made a complaint to the Chief Conservator of Forests, Shimla, with regard to the regularization of persons, since 13.1.2006, who were junior to him, and also about striking off his name from the seniority list. Although, he has agitated his right from 1984 to 2006, his services were not regularized, despite the fact that he had worked for about 23 years, for the reasons not known to him. Thus, when the needful was not done, on 4.9.2006, he raised a demand notice before the Labour-cum-Conciliation Officer, Shimla wherein he had stated that he kept on working with the respondent department, continuously, by completing 240 days in each calendar year and for this reason he was entitled for regularization w.e.f. 1.4.1994, as per the Policy of State Government and on the basis of the decision of the Hon'ble Supreme Court in case Mool Raj Upadhyay Vs. State of HP. His demand notice was also to this effect that persons junior to him had been regularized in the Division concerned. To the demand notice, when reply was filed by the respondent department, it was averred that he (petitioner) had not completed 240 days during the years, 1987, 1988, 1994, 2001 and 2002 and thus, he was not eligible for regularization as per the State seniority as well as Government Policy. Further, during the pendency of the dispute before Conciliation Officer, the respondent department had written a letter dated 25.10.2007, to him in order to clarify as to where, he had worked during his service, so that the factual position could be intimated, during conciliation proceedings, the date of which was fixed for 31.10.2007. Vide letter dated 31.10.2007, he had informed to have worked with those workmen whose services had been regularized during that tenure. Although, he had worked in the beat at Shalaghat in the year, 1984, but in the reply, filed by the respondent, before conciliation officer, it was not mentioned. Even, the respondent department did not produce the records pertaining to the years, 1984, 1985 and 1986. Apart from this, in the year, 1987, he has been shown to have worked for 71 days and in the year 1988 for 214 days, but those are not correct and required to be rectified. It has been specifically stated by him to have worked in the months of Jan., & Feb., 1994. In the month of March, 1994, his services were terminated. When, he had raised such objection, he was reengaged on 25.5.1994 and worked upto 30.11.1994, at Shalaghat beat. During that period, his attendance was marked on muster roll and he was also paid salary by preparing bills. It had also been agitated by him that his attendance for the months of April, 2001 and December, 2001 of Shalaghat Beat, had not been counted by the department. If the attendance for the said months, is counted, the total working days come to 270 in the year, 2001. For the year, 2002, his attendance has been shown to be 185 days but the committee which was constituted to check the records, found, on scrutiny, that there had been variation in his working days because in fact, he had worked for 233 days in the year, 2002 and not 185 days, as referred to above. Such variation has been shown by letter dated 27.11.2007, of the respondent department. That goes to show the adamant and careless attitude on the part of the respondent with regard to the petitioner. Further, in the seniority list, which has been prepared by the respondent department, dated 13.7.2000, the seniority of the petitioner has been shown at serial number 71, whereas that of his co-worker S/Shri Bhoop Singh at serial number, 25, Madan Lal, 81, Khali Ram, 118, and Radhey Shyam, at serial number 119. All the said co-workers have been regularized in the year, 2007. It is further averred that despite having put in more than 240 days, in each calendar year, the petitioner had been debarred from getting his right to be regularized. Against this back drop a prayer has been made that the petitioner be held entitled for regularization, in service, w.e.f. 1.4.1994, with seniority and also all the consequential service benefits.

3. The petition has been contested by denying that the services of the petitioner had been terminated during the month of Feb., 1994. In fact, he had left the job, on his own. In the year, 1994, he (petitioner) had only worked for 58 days. It is further maintained that the petitioner has been working as daily waged worker, on seasonal forestry work, in Arki Forest Range, since, 1987. It is further averred that he has not completed eight years of continuous service by working for minimum 240 days in each calendar year. For this reason, he is not eligible for regularization as per Government Policy. It has been specifically denied that the petitioner had been engaged in the year, 1984, as alleged. It is admitted that when the records were got re-checked, it was found that during 2002, the petitioner had worked for 233 days instead of 185, as shown. Now, correct position has been depicted in the records. As far as seniority list dated 13.7.2000, is concerned, it had been just circulated to the Range Forest Officers for information and necessary action. The number of working days could not be depicted for want of reports from field functionaries. Further, the Range Officers, had been asked to authenticate its (seniority list's) correctness and to send necessary reports immediately. This seniority list had not been circulated to the daily wagers concerned because the final list was to be finalized, only on the receipt of actual number of working days and other particulars, from the Range Forest Officers, concerned. Since, the petitioner had not fulfilled the conditions as per Policy framed by the Government, he is not, as yet, eligible for regularization.

4. By filing rejoinder, the petitioner has reaffirmed and reiterated his own allegations by denying those of the respondents.

5. On the pleadings of the parties, following issues were framed on 20.7.2010.

7. Whether the demand notice dated 4.9.2006, raised by the President Bhartiya Mazdoor Sangh, HP Shimla on behalf of petitioner regarding his regularization in service w.e.f. 1.4.1994, is legal and justified? . . . *OPP*.

8. If issue no.1 is proved, to what service benefits, the petitioner is entitled to? . . . *OPP*.

9. Relief.

6. I have heard Ld Counsel for the parties and have also gone through the records of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no.1      No.

Issue no.2      becomes redundant.

Relief.          Reference answered against the petitioner, per operative part of award.

### ***Reasons for findings***

#### ***Issue no.1.***

8. Learned Counsel for the petitioner has urged with vehemence that since, the petitioner had already completed ten years of service till 1994 (Feb., 1994), when his services were illegally terminated, he became entitled to be regularized. Ld. Counsel further submitted that even the junior persons to the petitioner have been regularized. On the contrary, it has been urged on behalf of the

respondent that since, the petitioner had not completed ten years of continuous service with a minimum of 240 days in each calendar year, for this reason, he is not entitled to be regularized in service w.e.f. 1.4.1994. Moreover, from the stand, as taken by respondent, and also from the material, on record, it is quite clear that the petitioner had been engaged as daily waged worker in the year, 1987 and not in the year, 1984 (1.1.1984), as has been alleged.

9. I may mention that in the statement of claim, which has been filed before this Court, the petitioner has specifically alleged that he had been engaged as daily waged Mali, at Forest Beat Shalaghat, in Kunihar Division, on 1.1.1984 and that he continued to remain as such, till 31.12.1993. According to him, his services had been terminated, orally, in the month of Feb., 1994. However, after a gap of two months, he was again reengaged, on 25.5.1994 and continued to remain as such till 12.12.1994, when he was again terminated. In order to challenge his termination, he had filed an application before Administrative Tribunal, registered as OA No. 3173 of 1994, which was withdrawn by him on 19.4.2005, as it had been observed by the Tribunal that it had no jurisdiction to entertain the same.

10. As per the stand, which has been taken by the respondents, the petitioner had been engaged as daily waged worker on seasonal forestry work in Arki Forest Range, since, 1987 and that he had not completed eight years of continuous service with minimum of 240 days in each calendar year. The defence plea is further to this effect that in the month of Feb., 1994, his services had not been orally terminated but on his own, he (petitioner) had left the job on having worked for only 58 days in the said year (1994).

11. Firstly, it requires to be ascertained as to whether the petitioner had been engaged w.e.f. 1.1.1984 or in the year, 1987, as is the defence version. When, the petitioner appeared in the witness box as PW-1, he stated that on 1.1.1984, he had been engaged, as Mali, on daily wages, at Shalaghat beat in Arki Range. On 28.2.1994, when he had come for work, in the Nursery, the Forest Guard (Amar Chand), gave him beatings by stating that he had been disengaged from services and that in his place, a junior person had been engaged. Regarding this incident, in which his two teeth got broken, he had written a letter to the Range Officer and DFO, the copy of which is Ex. P-1 but no action was taken. On 25.5.1994, he was again engaged and continued till 15.11.1994, when his services were again disengaged. When, he had been disengaged from service, he had moved the Administrative Tribunal and got stay but despite that he was being disengaged from time to time including in the month of December, 2001. Despite having been disengaged, he had kept on working in the Nursery till 15.1.2002 but his attendance was not being marked. However, from 16.1.2002, his presence started to be marked, in the muster roll. The copies of various letters, which he had written, are Ex. P-3, Ex. P-4, Ex. P-5 and Ex. P-6. In the year, 2004, he was asked by the Administrative Tribunal to move the Labour Court. Ex. P-7, is the copy of reply which the department had filed before the Conciliation Officer. Ex. P-8, is the letter, which Range officer had written to him, as well as Bhoop Singh, regarding discrepancy in seniority. He had also written a letter to the Range Officer, in respect of his seniority, the copy of which is Ex. P-9. Ex. P-10, is the copy of letter which had been written by the department to the Conciliation Officer. The copy of the seniority list is Ex. P-11 (objected to). Persons junior to him namely Radhey Shyam, Tej Singh, Jeet Ram, Bhim Chand etc., have been regularized by the department. In the cross-examination, he denied that he was engaged in the year, 1987. Regarding having worked from 1984 to 1987, he has not produced any document. When, he had been given beatings by the Forest Guard, no report was lodged in the Police Station. He denied that many times, he used to remain absent from his duties. He denied that in each calendar year, he had not completed 240 days. He further denied to have completed only 58 days in the year, 1994. Also denied that he was not regularized because in each calendar year, he had not completed 240 days and that the workers who have been regularized had completed 240 days in each calendar year. He expressed his ignorance that seniority list Ex. P-11, has not been finalized.



12. Shri Shri Bali Ram (PW-2), has stated from the service records of the petitioner that he (petitioner) had completed 240 days in calendar years from 1987 to 2009, except 1987 and 1988. In the year, 2001, he had worked for 288 days and in the year, 2002 for 233. In the years, 2001 and 2002, the petitioner had worked at Rampur in "Sanji Van Yojna", the record of which is with the Pradhan of said "Yojna". In this way, the petitioner had worked for more than 240 days in the years, 2001 and 2002. Workers junior to the petitioner, namely S/Shri Laiq Ram, Beli Ram, Rameshwar, Hem Raj, Baldev etc., who had been working with him (petitioner), have been regularized in the year, 1994. In the cross-examination, he stated that mandays chart Ex. R-1, has been prepared correctly and that it is correct as per their records. He admitted that he cannot tell anything in respect of the record which is not with the department. He further admitted that his version that the petitioner had worked at Rampur in "Sanji Van Yojna", and that in the years, 2001 and 2002, he had worked for 240 days, is not correct as per the records. Further stated that, such records are not available with the department. In the years, 1994, the petitioner had worked for 58 days, 1987, for 71 days and 1988, for 214 days. He admitted that the petitioner is not entitled to be regularized, on 1.1.1994, because he had not completed the requisite days. The department has corrected the working days of the petitioner for the year, 2002 to 233 instead of 185, as shown in Ex. R-1.

13. Shri Amar Nath, PW-3, has stated from the summoned records that Shalaghat Nursery falls in Kunihar Forest Division. As per their records, petitioner had worked from 1.1.1984 to 31.12.1993, at Shalaghat Nursery, as daily wager. In the year, 1995, he (petitioner) had again been reengaged and till date, he has been working. Ex. P- 11, has been issued by the department and in the seniority list, the name of the petitioner is shown at serial number 71. The workers, namely Madan Lal, shown in the seniority list (Ex. P-11), at serial number 81, Radhey Shyam, at 119 and Khyali Ram, at 118, have been regularized by the department in the year, 2007. Ex. R-1, has been issued by their office which is correct as per the records. Mandays chart Ex. PW-3/A, has also issued by their department which is correct. Similarly, Ex. PW-3/B, has been issued by their office. Their office had also issued Ex. P-8, Ex. P-9 and Ex. P-10. In the office, representations were being received from the petitioner that since his juniors had been regularized, he too be made regular. In the cross-examination, he stated that in the year, 1987, the petitioner had worked for 71 days and in the year 1994 for 58 days. Since, there was no work in the year, 1994, he was disengaged. He admitted that version in this regard that the petitioner had worked at Rampur in "Sanji Van Yojna", during the years, 2001 and 2002, for 240 days is not correct as per the records. In the year, 1994, the petitioner had not been disengaged but on his own, he left the job. Seniority list Ex. P-11, is tentative and not final. S/Shri Madan lal, Khyali Ram and Radhye Shyam had been regularized in the year, 2000 because they had completed 240 days in each calendar year. Since, the petitioner had not completed 240 days in the years, 2001 and 2002, he could not be regularized.

14. Shri Surinder singh (PW-4), has appeared in the witness box to state that in his capacity as President of mazdoor Union, HP, he had raised the demand notice, Ex. PW-4/A, on behalf of the petitioner. In the cross-examination, he stated that the petitioner was not the member of their union.

15. PW-5, Shri Jeet Ram, has stated that he was working as daily waged worker before 1984, in the Forest Department, Arki. He knows the petitioner who used to work with him as daily wager. In the year, 1994, he (PW-5), was regularized. He does not know for what reason, the petitioner could not be regularized. In the cross-examination, he stated that in the year, 1994, he had not worked with the petitioner. He does not know that in the years, 2001 and 2002, the petitioner had not completed 240 days.

16. RW-1, Shri R.S Jaswal, states that the petitioner had been engaged as daily wager for seasonal forestry work in the year, 1987 and not in the year, 1984. Ex, R-1, is the copy of his mandays, which is correct as per the original. In the years, 2001 and 2002, the petitioner had not

completed 240 days. The regularization of the daily wagers had been done in the year, 2007 and at that time only those daily workers had been regularized who had completed 240 days in previous eight years continuously. Since, the petitioner had not completed 240 days in previous eight years, continuously, his name was not considered for regularization. The petitioner is still working, as daily wager, with the department which is clear from the muster roll for the month of Feb., 2014, the copy of which is Ex. RW-1/A. As per the Government Policy, the name of the petitioner has also been recommended for regularization. In the cross-examination, he stated that he joined as DFO Kunihar on 14.4.2013 and that Ex. R-1, is not signed by him. He admitted that Shri Bali Ram remained as Range Officer, in his Division and that he (Bali Ram) had been deputed, to this Court, alongwith the records which were summoned by the petitioner. He admitted that juniors to the petitioner have already been regularized. He explained that the services of the petitioner could not be regularized as the same did not remain continuous. As, in the year, 2001, he too had completed the requisite years in service, enabling him for regularization, for this reason, his name was also sent to the government.

17. It has been specifically stated by Shri R.S Jaswal (RW-1) that the petitioner had been engaged as daily wager, for seasonal forestry work, in the year, 1987 and not 1984. His such version is supported by Ex. R-1, the mandays chart of the petitioner. Although, it has been stated by the petitioner (PW-1) that he had been engaged on 1.1.1984, but in support thereof, he has not produced any document. Shri Amar Nath (PW-3), has stated that the petitioner had worked in Shalaghat Nursery, falling within Forest Division Kunihar w.e.f. 1.1.1984 to 31.12.1993 but his such version has not been supported by documentary evidence. He has also stated that it is not as per the records that the petitioner had worked at Rampur in "Sanji Van Yojna". Shri Bali Ram (PW-2), states that as per the service records of the petitioner, he had completed 240 days from the years, 1987 to 2009, except 1987 and 1988. Although, it has also been stated by him that in the years, 2001 and 2002, the petitioner had worked in "Sanji Van Yojna" at Rampur but further stated that in this regard, the record is not available with them. Shri Jeet Ram (PW-5), has stated that he knows the petitioner and that he had worked with him but his evidence does not go to show that the petitioner had been engaged in the year, 1984. I may mention that the petitioner has also relied upon mandays chart Ex. PW-3/A, which shows that his working days have been given from the years starting from 1987 till 2005. The document (mandays chart of the petitioner) Ex. R-1, which has been filed by the respondents, is pertaining to the years, 1987 to 2009. From these documents which have been relied upon by both the parties, it stands proved before this Court that the petitioner had been engaged in the year, 1987 and not 1984, as has been sated by the him (PW-1).

18. Now, it is required to be ascertained as to whether from 1987 till 1994, the petitioner had completed 240 days in each calendar year. I may mention that in the year 1987, the petitioner had worked for 71 days, 1988 for 214, 1989 for 353, 1990 for 359, 1991 for 294, 1992 for 355, 1993 for 267 and 1994 for 58. From this document, it is quite clear that the petitioner had not completed 240 working days in the year, 1987, 1988 and 1994. In the petition, it has been mentioned that as per the case decided by Hon'ble Apex Court, in Mool Raj Upadhyay Vs. State of HP, the petitioner is entitled to be regularized w.e.f. 1.4.1994. I may mention that such claim of the petitioner could have been justified if he had succeeded in proving that on 1.1.1994, he had completed ten years or more of continuous service with a minimum of 240 days in a calendar year. As already observed, it has not been proved by him that he had been engaged on 1.1.1984. The evidence, which has come, on record, goes to show that he had been engaged in the month of July, 1987 and that in the said year, he had worked for 71 days, in total. This clearly goes to show that before his alleged disengagement, in the year, 1994, he had not completed 240 days in the years, 1994, 1988 and 1987. I may mention that the demand notice which had been raised by the petitioner, through President Bhartiya Mazdoor Sangh, HP, seeking his regularization in service w.e.f. 1.4.1994, could have been held to be legal and justified, only if he had succeeded in proving that he was engaged on 1.1.1984 and upto 1.4.1994, completed 240 days of continuous service in

each calendar year. I dis-agree with the Ld. Counsel for the petitioner that from the evidence which has been led by the petitioner, he has been able to prove that in each calendar year, he had been completing 240 days of continuous service. It has been rightly urged on behalf of the respondents, that since, the petitioner has failed to prove that in each calendar year, he had been completing 240 days of continuous service, he is not entitled to claim his regularization, in service, w.e.f. 1.4.1994.

19. Consequently, for my discussion, foregoing, I, without hesitation, hold that the petitioner has failed to prove that the demand notice dated 4.9.2006, raised by the President Bhartiya Mazdoor Sangh, HP, claiming the regularization of the petitioner w.e.f. 1.4.1994, is legal and justified. Thus, my answer to this issue is in "no".

***Issue no.2.***

20. For the failure of the petitioner to have proved issue no.1, this issue becomes redundant.

***Relief.***

As a sequel to my findings on the aforesaid issues, the claim of the petitioner fails and is hereby dismissed. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today on this 3rd day of Sept., 2014.

(A.S JASWAL),  
Presiding Judge,  
Industrial Tribunal-cum-Labour Court, Shimla.

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**IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL  
CUM-LABOUR COURT, SHIMLA**

Ref. No. 4 of 2009.

Instituted on 16.1.2009.

Decided on 3.9.2014.

Bhoop Singh S/o Shri Sukh Ram R/o Village Chaina, P.O Bathanlang, Tehsil Arki, District Solan, HP. . .Petitioner.

*VS.*

3. The Divisional Forest Officer, Kunihar, Tehsil Arki, District Solan, HP.

4. Chief Conservatory of Forests, Talland Shimla, HP. . .Respondents.

*Reference under section 10 of the Industrial Disputes Act, 1947.*

For petitioner : Shri O.P Chauhan, Advocate.

For respondents : Shri Surender Negi, Dy. DA.

**AWARD**

The reference for adjudication, is as under:

***“Whether the demand notice dated 4.9.2006, raised by the President Bhartiya Mazdoor Sangh, HP, Shimla on behalf of Shri Bhoop Singh S/o Shri Sukh Ram daily wage workman, regarding his regularization in service w.e.f. 1.4.1994, before the Divisional Forest Officer, Kunihar, District Solan, HP is legal and justified? If yes, to what seniority, service benefits and relief Shri Bhoop Singh workman is entitled to?”***

2. Briefly, the case of the petitioner is that he had been engaged as daily waged Forest Mazdoor at Harlaghat, Forest Range, in Kunihar Division, in the year, 1980. Later on, he was transferred to Arki Range in the same Division. It is alleged that in the month of Jan., 1994, he was suddenly asked not to work. In this way, his services stood, orally, terminated. Faced with such a situation, he had been left with no other alternative but to file an application before the Administrative Tribunal which came to be registered as OA No. 305 of 1995 titled as Bhoop Singh Vs. State of HP and anr. In that application, the Ld. Tribunal had granted stay and ordered to reengage him. Since, then, he has been working in the parental department till date. On 16.9.2004, the original application had been returned by the Ld. Tribunal with the observation that it had got no jurisdiction to decide the same with the direction to the petitioner to approach the appropriate forum. Even, after passing of the order dated 16.9.2004, he continued to work with the respondent department till date. On 4.9.2006, he raised a demand notice before Labour-cum-Conciliation Officer, Shimla (hereinafter referred as Conciliation Officer), wherein he stated to have worked, continuously, for 240 days in every calendar year and for this reason to be entitled for regularization w.e.f. 1.4.1994, as per the policy of HP Government and also on the basis of the decision of the Hon'ble Supreme Court in case, Mool Raj Upadhyay Vs. State of HP. In the demand notice, it had also been asserted that junior persons to him had already been regularized in the Division concerned. To the demand notice, reply had been filed by the respondent department, in which, it was alleged that he (petitioner) had not completed 240 days during the years 1986, 1990 to 1994, 2001 and 2002, and for this reason not eligible for regularization as per the State Seniority and Government policy. Further, during the pendency of the conciliation proceedings, the respondent department had written letter dated 25.10.2007, to him in order to clarify as to at what places, he had worked during his service period, so that the exact position could be intimated to the Conciliation Officer, on the fixed date of hearing i. e 31.10.2007. Since, in the year, 2002, he was shown to have worked for 174 days, he got constituted a committee to check the records and that on scrutiny, it was found by the committee that in the said year, he had worked for 213 days and not 174. This variation, in the working days, has been shown through letter dated 26.11.2007, of the respondent department. Such lapse on the part of the respondent department goes to show its careless and adamant attitude towards him. In the seniority list, dated 13.7.2000, prepared by the respondent department, his name has been shown at serial number 25, whereas that of S/Shri Madan lal, 81, Khli Ram, 118 and Radhey Shyam, at serial no. 119. The aforesaid persons were regularized in the year, 2007. Despite the fact that he has rendered more than 25 years of service, he has not been regularized. Against this backdrop a prayer has been made to hold him entitled for regularization in service w.e.f. 1.4.1994, with seniority and all other service benefits.

3. The petition has been contested by asserting that since 1984, the petitioner has been working as daily waged worker, on seasonal forestry works, in Darla & Arki Forest Ranges. It is further maintained that he did not complete eight years of continuous service with minimum of 240 days in each calendar year. It is further averred that his services had not been terminated but on his own, he absented himself from work. In the year, 1994, he had only worked for 56 days. Since, he had not completed eight years of continuous service, he was not eligible for regularization as per the policy framed by the government. Even, in the years, 2001 and 2002, he did not complete 240

days. No person, junior to him, has been regularized. As far as seniority list dated 13.7.2000, is concerned, it had been circulated to the Range Forest Officers for information and necessary action by asking them to authenticate its correctness and also to send necessary particulars etc. That seniority list had not been circulated to the daily wagers, because it was to be finalized, only on receipt of actual number of working days and other particulars, from Range Forest Officers, concerned. It is further maintained that the daily wagers who had fulfilled the conditions/criteria and as approved by the screening committee, have already been regularized.

4. By filing rejoinder, the petitioner has reaffirmed and reiterated his own allegations by denying those of the respondents.

5. On the pleadings of the parties, following issues were framed on 20.7.2010.

10. Whether the demand notice dated 4.9.2006, raised by the President Bhartiya Mazdoor Sangh, HP Shimla on behalf of petitioner regarding his regularization in service *w.e.f.* 1.4.1994, is legal and justified? . . .*OPP.*

11. If issue no.1 is proved, to what service benefits, the petitioner is entitled to?

. . .*OPP.*

12. Relief.

6. I have heard Ld Counsel for the parties and have also gone through the records of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no.1 No.

Issue no.2 becomes redundant.

Relief. Reference answered against the petitioner, per operative part of award.

### ***Reasons for findings.***

#### ***Issue no.1.***

8. Learned Counsel for the petitioner has urged with vehemence that since, the petitioner had already completed ten years of service till 1994 (Jan.,1994), when his services were illegally terminated, he became entitled to be regularized. Ld. Counsel further submitted that even the junior persons to the petitioner have been regularized. On the contrary, it has been urged on behalf of the respondent that since, the petitioner had not completed ten years of continuous service with a minimum of 240 days in each calendar year, for this reason, he is not entitled to be regularized in service *w.e.f.* 1.4.1994. Moreover, from the stand, as taken by respondent, and also from the material, on record, it is quite clear that the petitioner had been engaged as daily waged worker in the year, 1984 and not in the year, 1980, as has been alleged.

9. I may mention that in the statement of claim, which has been filed before this Court, the petitioner has specifically alleged that he had been engaged as daily waged Mazdoor, at Harlaghat Range, in Kunihar Division, in the year, 1980 and that he continued to remain as such, till Jan., 1994. According to him, his services had been terminated, orally, in the month of Jan., 1994. In order to challenge his termination, he had filed an application before Administrative

Tribunal, registered as OA No. 305 of 1995, which was withdrawn by him on 16.9.2004, as it had been observed by the Tribunal that it had no jurisdiction to entertain the same.

10. As per the stand, which has been taken by the respondents, the petitioner had been engaged as daily waged worker on seasonal forestry works in Darla & Arki Forest Ranges, since, 1984 and that he did not complete eight years of continuous service with minimum of 240 days in each calendar year. The defence plea is further to this effect that in the month of Jan., 1994, his services had not been orally terminated but on his own, he (petitioner) absented himself, on having worked for only 58 days in the said year (1994).

11. Firstly, it requires to be ascertained as to whether the petitioner had been engaged from the year, 1980, as is his case or in the year, 1984. When, the petitioner appeared in the witness box as PW-1, he stated that in the year, 1980, he had been engaged, as beldar, on daily wages, in Forest Department. Initially, he had been engaged at Dhami Forest Range and thereafter, he was transferred to Arki Range. He continuously worked till 1994, in which year, he had been removed from service. When, he had been disengaged from service, he had moved the Administrative Tribunal and got stay, the copy of which is Ex. P-1 (objected to) and since then he has been working continuously with the department. In the years, 2001 and 2002, the department had given breaks in his service. In the year, 2004, he was asked by the Administrative Tribunal to move the Labour Court. Ex. P-2, is the copy of reply which the department had filed before the Conciliation Officer. The copy of the seniority list is Ex. P-4. Persons junior to him have been regularized by the department. In the cross-examination, he denied that he was engaged in the year, 1984. He was being marked present whenever he was engaged. He denied that many times, he used to remain absent from his duties. He denied that in each calendar year, he had not completed 240 days. He admitted not to have produced any documents regarding having been worked from 1980 to 1984. Also denied that he was not regularized because in each calendar year, he had not completed 240 days and that the workers who have been regularized had completed 240 days in each calendar year. He expressed his ignorance that seniority list Ex. P-4, has not been finalized.

12. Shri Shri Bali Ram (PW-2), has stated from the service records of the petitioner that he (petitioner) had completed 240 days in calendar years from 1984 to 2009, except 2001 and 2002. In the year, 2001, he had worked for 218 days and in the year, 2002 for 213. In the years, 2001 and 2002, the petitioner had worked at Rampur in "Sanji Van Yojna", the record of which is with the Pradhan of said "Yojna". In this way, the petitioner had worked for more than 240 days in the years, 2001 and 2002. Workers junior to the petitioner, namely S/Shri Laiq Ram, Beli Ram, Rameshwar, Hem Raj, Baldev etc., who had been working with him (petitioner), have been regularized. In the crossexamination, he stated that mandays chart Ex. R-1, has been prepared correctly and that it is correct as per their records. He admitted that he cannot tell anything in respect of the record which is not with the department. He further admitted that his version that the petitioner had worked at Rampur in "Sanji Van Yojna", and that in the years, 2001 and 2002, he had worked for 240 days, is not correct as per the records. Further stated that, such records are not available with the department. In the years, 1984, the petitioner had worked for 148 days, 1985, 0, 1986, 230, 1991 12, 1992, 86, 1993, 177 and 1994 for 56 days. He admitted that the petitioner is not entitled to be regularized on 1.1.1994 because he had not completed the requisite days.

13. Shri Amar Nath, PW-3, has sated from the summoned records that Shalaghat Nursery falls in Kunihar Forest Division. As per their records, petitioner had worked from 1.1.1980 to 31.12.1994, at Shalaghat Nursery, as daily wager. In the year, 1995, he (petitioner) had again been reengaged and till date, he has been working. Ex. PW-3/A, has been issued by the department. In the seniority list, the name of the petitioner has been shown at serial number 25. The workers, namely Madan Lal, shown in the seniority list (Ex. P-4), at serial number 81, Radhey Shyam, at 119 and Khyali Ram, at 118, have been regularized by the department in the year, 2007. In the

office, representations were being received from the petitioner that since his juniors had been regularized, he too be made regular. In the cross-examination, he stated that in the year, 1994, the petitioner had worked for 56 days. In the year, 1994, the petitioner had not been disengaged but on his own, he left the job. Seniority list Ex. P-4, is tentative and not final. Since, the petitioner had not completed 240 days in the years, 2001 and 2002, he could not be regularized.

14. Shri Surinder Singh (PW-4), has appeared in the witness box to state that in his capacity as President of Mazdoor Union, HP, he had raised the demand notice, Ex. PW-4/A, on behalf of the petitioner. In the cross-examination, he stated that the petitioner was the member of their union.

15. PW-5, Shri Jeet Ram, has stated that he was working as daily waged worker before 1984, in the Forest Department, Arki. He knows the petitioner who used to work with him as daily wager. In the year, 1994, he (PW-5), was regularized. He does not know for what reason, the petitioner could not be regularized. In the cross-examination, he stated that after the year, 1994, he had not worked with the petitioner. He does not know that the petitioner had not completed 240 days.

16. RW-1, Shri R.S Jaswal, states that the petitioner had been engaged as daily wager for seasonal forestry work in the year, 1984 and not in the year, 1980. Ex. R-1, is the copy of his mandays, which is correct as per the original. In the years, 2001 and 2002, the petitioner had not completed 240 days. The regularization of the daily wagers had been done in the year, 2007 and at that time only those daily workers had been regularized who had completed 240 days, in previous eight years, continuously. Since, the petitioner had not completed 240 days in previous eight years, continuously, his name was not considered for regularization. The petitioner is still working, as daily wager, with the department which is clear from the muster roll for the month of Feb., 2014, the copy of which is Ex. RW-1/A. As per the Government Policy, the name of the petitioner has also been recommended for regularization. In the cross-examination, he stated that he joined as DFO Kunihar on 14.4.2013 and that Ex. R-1, is not signed by him. He admitted that Shri Bali Ram remained as Range Officer, in his Division and that he (Bali Ram) had been deputed, to this Court, alongwith the records which were summoned by the petitioner. He admitted that juniors to the petitioner have already been regularized. He explained that the services of the petitioner could not be regularized as the same did not remain continuous. As, in the year, 2001, he too had completed the requisite years in service, enabling him for regularization, for this reason, his name was also sent to the government.

17. It has been specifically stated by Shri R.S Jaswal (RW-1) that the petitioner had been engaged as daily wager, for seasonal forestry work, in the year, 1984 and not 1984. His such version is supported by Ex. R-1, the mandays chart of the petitioner. Although, it has been stated by the petitioner (PW-1) that he had been engaged in the year, 1980, but in support thereof, he has not produced any document. Shri Amar Nath (PW-3), has stated that the petitioner had worked in Shalaghat Nursery, falling within Forest Division Kunihar w.e.f. 1980 to 1994 but his such version has not been supported by documentary evidence. He has also stated that it is not as per the records that the petitioner had worked at Rampur in "Sanji Van Yojna". Shri Bali Ram (PW-2), states that as per the service records of the petitioner, he had completed 240 days from the years, 1984 to 2009, except 2001 and 2002. Although, it has also been stated by him that in the years, 2001 and 2002, the petitioner had worked in "Sanji Van Yojna" at Rampur but further stated that in this regard, the record is not available with them. Shri Jeet Ram (PW-5), has stated that he knows the petitioner and that he had worked with him but his evidence does not go to show that the petitioner had been engaged in the year, 1984. I may mention that the petitioner has also relied upon mandays chart Ex. PW-3/A, which shows that his working days have been given from the years starting from 1984 till 2005. The document (mandays chart of the petitioner) Ex. R-1, which has been filed by

the respondents, is pertaining to the years, 1984 to 2009. From these documents which have been relied upon by both the parties, it stands proved before this Court that the petitioner had been engaged in the year, 1984 and not 1980, as has been sated by the him (PW-1).

18. Now, it is required to be ascertained as to whether from 1984 till 1994, the petitioner had completed 240 days in each calendar year. I may mention that in the year 1984, the petitioner had worked for 148 days, but in the year, 1985, he did not work for a single day. In the years, 1986, he had worked for 230, 1987, 257, 1988, 1989, 305, 1990, 188, 1991, 12, 1992, 86, 1993, 177 and 1994 for 56 days. From this document, it is quite clear that the petitioner had not completed 240 working days in the years, 1984, 1985, 1986, 1990, 1991, 1992, 1993 and 1994. In the petition, it has been mentioned that as per the case decided by Hon'ble Apex Court, in Mool Raj Upadhyay Vs. State of HP, the petitioner is entitled to be regularized *w.e.f.* 1.4.1994. I may mention that such claim of the petitioner could have been justified if he had succeeded in proving that on 1.1.1994, he had completed ten years or more of continuous service with a minimum of 240 days in a calendar year. As already observed, it has not been proved by him that he had been engaged on 1.1.1980. The evidence, which has come, on record, goes to show that he had been engaged in the month of April, 1984 and that in the said year, he had worked for 148 days, in total. This clearly goes to show that before his alleged disengagement, in the year, 1994, he had not completed 240 days in the years, 1984, 1985, 1986, 1990, 1991, 1992, 1993 and 1987. I may mention that the demand notice which had been raised by the petitioner, through President Bhartiya Mazdoor Sangh, HP, seeking his regularization in service *w.e.f.* 1.4.1994, could have been held to be legal and justified, only if he had succeeded in proving that he was engaged in the year 1980 and upto 1.4.1994, completed 240 days of continuous service in each calendar year. I dis-agree with the Ld. Counsel for the petitioner that from the evidence which has been led by the petitioner, he has been able to prove that in each calendar year, he had been completing 240 days of continuous service. It has been rightly urged on behalf of the respondents, that since, the petitioner has failed to prove that in each calendar year, he had been completing 240 days of continuous service, he is not entitled to claim his regularization, in service, *w.e.f.* 1.4.1994.

19. Consequently, for my discussion, foregoing, I, without hesitation, hold that the petitioner has failed to prove that the demand notice dated 4.9.2006, raised by the President Bhartiya Mazdoor Sangh, HP, claiming the regularization of the petitioner *w.e.f.* 1.4.1994, is legal and justified. Thus, my answer to this issue is in "no".

### ***Issue no.2.***

20. For the failure of the petitioner to have proved issue no.1, this issue becomes redundant.

### ***Relief.***

As a sequel to my findings on the aforesaid issues, the claim of the petitioner fails and is hereby dismissed. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today on this 3rd day of Sept., 2014.

(A.S JASWAL),  
Presiding Judge,  
Industrial Tribunal-cum- Labour Court, Shimla.



**IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL  
CUM-LABOUR COURT, SHIMLA**

Ref. no. 12 of 2014.

Instituted on 8.1.2014.

Decided on.24.9.2014.

Anil Kumar S/o Shri Harnam Singh R/o Village & P.O Khanol, Tehsil Arki, District Solan,  
HP. ..Petitioner.

VS.

The President LTV Union, Village & P.O Kunihar, Tehsil Arki, District Solan, HP.  
..Respondent.

*Reference under section 10 of the Industrial Disputes Act, 1947.*

For petitioner: None.

For respondent: None.

**ORDER/AWARD**

The reference for adjudication, is as under:-

***“Whether termination of services of Shri Anil Kumar S/o Shri Harnam Singh R/o Village & P.O Khanol, Tehsil Arki, District Solan, HP, who was employed as Clerk by the President LTV Union, Village & P.O Kunihar, Tehsil Arki, District Solan, HP w.e.f. 24.7.2012, without following the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above exworker is entitled to from the above employer?”.***

2. It needs to be stated that on having been issued notice, by this Court, the petitioner had appeared on 4.7.2014. The case was then fixed for 14.8.2014, for the service of the respondent. However, on the said date (14.8.2014), the petitioner failed to appear before this Court. Taking note of this legal aspect that a reference could not have been dismissed in default, fresh notice was ordered to be issued to the petitioner for 24.9.2014 but again he failed to appear, before this Court, despite having been served in accordance with law. In these circumstances, this Court was left with no other alternative but to decide the reference on the basis of material available on the file.

3. The case of the petitioner is that his services were illegally terminated without following the provisions of the Industrial Disputes Act, 1947 (hereinafter referred as Act) w.e.f. 24.7.2012. In support of his such plea, neither he has filed any statement of claim nor appeared in the witness box as his own witness. Be it reiterated that aforesaid needful could not be done as the petitioner had failed to appear before this Court despite having been served. When, such is the position, there is no material before this Court to show that his services w.e.f. 24.7.2012 have been terminated in violation of the provisions of the Act. For want of substantive evidence, this reference is required to be answered against the petitioner and accordingly it is answered. Let a copy of this order/award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced:  
24.9.2014.

(A. S. JASWAL),  
*Presiding Judge,*  
*Industrial Tribunal-cum-*  
*Labour Court, Shimla*

Ref.60/2013

Sh Dharam Singh V/S Vice President M/s Hitkari Industrial Ltd. & others.

23.9.2014:-

Present:- None for the petitioner.

Sh. Kartar Singh , Advocate for respondent.

On the previous date, Sh J.C.Bhardwaj, AR had appeared for the petitioner but today, he is not present. It has been stated by Sh Kartar Singh , Advocate that already a compromise has been effected between the parties. In this regard , he has brought on record, declaration, made by the petitioner( Dharam Singh) To this effect his statement recorded separately.

Heard.

The reference made to this Court by the appropriate government is as under:--

“Whether termination of the services of the Shri Dharam Singh, through Shri J.C.Bhardwaj AR and President of HPAITUC H.Q Saproon Solan *w.e.f.* 17.7.2011 , by the Vice President M/s Hitkari Industries Ltd , ( Unit-1&iii), Polt No .18,Sector -1 Industrial Area, Parwanoo, District Solan, HP and The Managing Director ,M/s Hitkari Industries Ltd , ( Unit I & III)1-1(A) Dhawandeep Apartments, 6 Jantar Mantar Road, Opposite Kerla House , New Dehli, 11001 (Corporate address)without complying the provisions of the Industrial Dispute Act,1947 is legal and justified? If not , what service benefits and from which date the above worker is entitled to from the above employer?”

In view of the statement of Shri Kartar Singh, Advocate for respondent , this reference is required to be answered to have resulted in compromise . Accordingly, the reference is answered of which the statement of Shri Kartar Singh and declaration Ex .PA shall form part and parcel of this order/ award. Let a copy of this order/award be sent to the appropriate government for publication in the official gazette. File , after completion, be consigned to records.Announced:

23.9.2014

Sd/-  
(A. S. JASWAL),  
*Presiding Judge*  
*Labour Court, Shimla.*

Ref.17/2008

The Gen, Secty. /President, Revere pent land workers Union V/s M.D.M/s revere pent land (p) Ltd Sirmour.

14.10.2014:-

Present:- None for the petitioner.

Sh Navlesh Verma ,Advocate for the respondent.

Be awaited upon.

Sd/-  
*Presiding Judge,*  
*Labour Court, Shimla,*

Case Called again

14.10.2014

Present:- Sh Rahul Mahajan, Advocate for the petitioner.

Sh Navlesh Verma ,Advocate for the respondent.

Vide my previous order dated 22.9.2014, a direction had been issued to shri Rahul Mahajan, Advocate for the petitioner in order to produce , before this Court , Shri Harvinder Singh , President of the workers union. In the said order, I had made it amply clear that it was the last opportunity, being afforded to the counsel in order to produce said Harvinder Singh so that his version could be recorded by this Court regarding the compromise alleged to have been effected between the parties. Today, Sh Rahul Mahajan, Advocate for the petitioner has brought, on file, the copy of the letter, which had been sent to Shri Harvinder Singh, through registered post, intimating him regarding the date of the hearing *i.e.* 14.10.2014 . He further stated that despite having been informed through registered letter. Said Harvinder Singh has not turned up before this Court.

Since, Shri Harvinder Singh, the President of the workers union has failed to appear , before this Court, despite having been informed by this Counsel Sh Rahul Mahajan Advocate, the version of the respondent/applicant made through an application for the dismissal of this reference alleging therein that on 19.7.2014, an agreement has been effected with the President of the workers union which culminated into a compromise has to be believed and accepted . I may also like to mention that, before this Court , no other worker has put presence in order to refute/deny the alleged compromise which has been effected by the President of the workers Union with the respondent management.

In these circumstances, I have been left with no pther alternative but to accept the version of the respondent/ applicant, made in the application, seeking the dismissal of this reference, which is also supported with an affidavit that a compromise has already been effected between the parties on 19,8,2014. Consequently, this reference stands answered/decided to have resulted into compromise between parties. Let a copy of this order/award be sent to the appropriate government for publication in the official gazette . File , after completion, be consigned to records.

Announced:-

14.10.2014

Sd/-  
*Presiding Judge,*  
*Labour Court, Shimla.*

Ref.18/2014

Sh Sitar Mohammed V/s Secy HP State Electricity Board Shimla.

13.10.2014:-

Present:- Petitioner with Shri SS Sippy, AR

Sh Raj Chandel, Advocate vice Shri Ramakant Sharma, Advocate.

It has been stated by the petitioner that he has been appointed for the post of T/mate work charged basis in the pay scale of Rs. 5100-10680+1700 (GP) and in this regards, he has been given an offer as per memorandum, the photocopy of which he is producing before this Court. He further stated that the terms and conditions of his aforesaid appointment are acceptable to him. Since, he is ready and willing to accept the offer of appointment, this reference be decided accordingly.

On having heard the version of the petitioner, I am satisfied that the offer which has been made to him for the post of T/mate work charged basis is acceptable to him. Thus, I proceed to record his statement in this regard, which is recorded accordingly. Material on record perused. The reference made to this Court by the appropriate government is as under:-

“Whether non-regularization of the services of Shri Sitar Mohd. S/o Sh Nurudeen Village Sai, P.O Parvaha, Tehsil Nalagarh, District Solan, HP by the i) The Secretary, HP State Electricity Board, Vidut Bhawan Shimla-4 and ii) The Senior Executive Engineer, Electrical Division HPSEB Ltd., Nalagarh, District Solan, HP w.e.f. Jan, 1997 is legal and justified? If not, from which date the above aggrieved workman is entitled to be regularized and what other consequential service benefits he is entitled from the employer/HPSEB?”

Since, during the pendency of this reference, the petitioner has been appointed for the post of T/mate work charged basis in the pay scale of Rs. 5100-1060+1700 (GP) and that the terms and conditions which have been made in the memorandum, Ex. PA are acceptable to him, this reference is required to be decided in terms of the statement of Shri Sitar Mohd., (Petitioner) made before this Court. Accordingly, the reference, made to this Court, stands decided in terms of the statement of the petitioner and memorandum Ex. PA which are to form part and parcel of this order/award. Let a copy of this order/award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:-

13.10.2014

Sd/-  
Presiding Judge,  
Labour Court, Shimla.

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**IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL  
CUM-LABOUR COURT, SHIMLA CAMP AT SOLAN**

Ref no. 34 of 2014

Instituted on 7.4.2014

Decided on 13.10.2014.

Tej Singh C/o Shri Prem Chand Thakur R/o Thakur Villa Near Punder Niwas, P.O Chambaghat, District Solan, HP. . .Petitioner.

VS.

The Registrar, Maharishi Markandeshwar University, Sultanpur Road, Kumarhatti, District solan, HP. . .Respondent.

*Reference under section 10 of the Industrial Disputes Act, 1947.*

For petitioner: None.

For respondent: Shri Ravi Kumar, AR.

### **ORDER/AWARD**

The reference for adjudication, is as under:--

**“Whether transfer of Shri Tej Singh C/o Shri Prem Chand Thakur R/o Thakur Villa Near Punder Niwas, P.O Chambaghat, District Solan, HP w.e.f. 18.1.2012 from Maharishi Markandeshwar University Kumarhatti to Maharishi Markandeshwar University, Mulana (Ambala) by the Registrar, Maharishi Markandeshwar University, Sultanpur Road, Kumarhatti, District Solan, HP during the pendency of proceedings regarding miscellaneous demands notice dated 12.12.2011 without taking expressed permission in writing of the authority before which the proceedings were pending i.e Labour Officer-cum-Conciliation Officer, Solan in violation of the provisions of section 33 of the Industrial Disputes Act, 1947 as well as transferring against the Principles of natural justice are legal and justified? If not, what amount of back wages, seniority, past service benefits and from which date the above worker is entitled to from the above employer? ”**

2. Consequent upon the receipt of reference, in this Court, from the appropriate government, notices were issued to the parties. On the fixed date i.e 8.7.2014, whereas Shri Ravi Kumar AR appeared on behalf of the respondent but the petitioner, for the said date, was not served as notice, issued to him, was not received back. For his service, fresh notice was ordered to be issued for 22.8.2014 on which date Shri Ravi Kumar, AR appeared for respondent but the petitioner failed to appear despite having been served as per law. This Court, having regard to the legal proposition that a reference cannot be dismissed in default further ordered that fresh notice, through affixation, be issued to the petitioner for 13.10.2014 so that he could appear before this Court in support of his claim which resulted in making a reference. Despite having been served, as per law, for the fixed date i.e 13.10.2014, the petitioner again failed to appear before this Court. Faced with such a situation, there was no other alternative left with this Court but to decide this reference on the basis of material, whatsoever, available on record.

3. It has been alleged by the petitioner that his transfer w.e.f. 18.1.2012 from Maharishi Markandeshwar University Kumarhatti to Maharishi Markandeshwar University, Mulana (Ambala) by the respondent, during the pendency of proceedings regarding miscellaneous demands notice, dated 12.12.2011, without taking express permission, in writing, of the authority before which the proceedings were pending i.e Labour Officer-cum-Conciliation Officer, Solan, is illegal and unjustified.

4. Since, the petitioner has failed to appear before this Court in support of his such contention and further there is no such material, before this Court, which may go to show that the contention, as said above, is illegal and unjustified, I have been left with no other alternative but to

hold that the petitioner has been unable to prove his claim/case which is a subject matter, to be adjudicated by this Court. Consequently, the reference stands decided against the petitioner. Let a copy of this order/award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:

13.10.2014.

Sd/-  
Presiding Judge,  
Labour Court, Shimla.

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**IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL  
CUM-LABOUR COURT, SHIMLA CAMP AT NAHAN**

Ref no. 14 of 2010.

Instituted on 12.4.2010.

Decided on.17.10.2014.

Sarwan Kumar S/o Shri Chattar Singh R/o Village Kanshipur, Paonta Sahib, District  
Sirmour, HP. . .Petitioner.

VS.

General Manager, Calchem Industries, Gondpur, Tehsil Paonta Sahib, District Sirmour, HP.  
. .Respondent.

*Reference under section 10 of the Industrial Disputes Act, 1947.*

For petitioner: Shri Amit Semwal, Advocate.

For respondent: Shri Mukul Garg, Advocate.

**AWARD**

The reference for adjudication, is as under:--

***“Whether dismissal from the services of Shri Sarwan Kumar S/o Shri Chattar Singh by the Management of M/s Calchem Industries, Gondpur, Tehsil Paonta Sahib, District Sirmour, HP vide orders dated 1.7.2009 w.e.f. 1.7.2009, after conducting domestic enquiry and without giving adequate opportunity to above worker of being heard and without complying the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, to what amount of back wages, compensation and other relief the above named workman is entitled to?”***

2. In nutshell the case of the petitioner is that, in the year, 1997, he was initially engaged as helper by the respondent industry (hereinafter referred as respondent) and thereafter his services were confirmed on 1.5.1998, as his work and conduct was satisfactory. It is further averred that in the month of August, 2008 (20.8.2008), the Mazdoor Union of the respondent took a decision, in the general house, not to do work, in the factory, due to misbehavior of Shri Bishan Singh and as

per other decision taken on 21.8.2008, the workers were to return to work only on the taking of action against said Bishan Singh. Since, no action was taken by the management of the respondent, it was decided by the general house that all workers w.e.f. 24.8.2008, were to go on indefinite strike. Resolutions were also passed on 1.11.2008 to 6.11.2008, for the termination of Bishan Singh. It is further averred that the respondent management issued a chargesheet-cum-suspension order dated 30.9.2008, alleging therein that the petitioner along-with other co-workers had raised slogans and did not allow the workers to go inside the factory premises. It was also stated in the chargesheet that even the workers of contractors, namely Shri Maksood Ali and Ram Krishan were threatened by the petitioner and co-workers. In fact, the strike had been called by the Mazdoor Union and the petitioner had never threatened any contract workers besides restraining them from performing their duties. In this way, the chargesheet against him was totally false and incorrect. Thus, the respondent management had adopted unfair labour practice and acted in a biased manner against the petitioner. The enquiry officer who had been appointed by the respondent management was biased towards him (petitioner) because he was the man of the management. Even, the enquiry procedure had not been explained to the petitioner. The respondent management also did not give him the list of witnesses as well as the documents relied upon against him, either with the chargesheet or during the course of enquiry. Thus, a material prejudice had been caused to him in defending his case. Moreover, the objections, which had been raised by the petitioner were not considered by the enquiry officer and he (enquiry officer) kept on writing the proceedings as dictated by the respondent management. The petitioner was also not allowed to cross-examine the witnesses in just and proper manner because the enquiry officer used to unnecessarily interfere. Even, the petitioner had not been allowed to lead his evidence. Thus, the enquiry which had been conducted against him was unjust, unfair and in violation of the principles of natural justice. The enquiry officer had submitted his report on 20.1.2009 and that the second show cause notice which was issued to the petitioner was dated 9.6.2009 and it was replied on 20.6.2009. This goes to show the malafides of the respondent management in not taking action against him for six months. On 1.7.2009, his services were terminated in illegal and arbitrary manner. Against this back-drop, a prayer has been made for her reinstatement along-with all consequential benefits.

3. The petition has been contested on having raised preliminary objection qua maintainability. On merits, it has been asserted that the conduct of the petitioner was not good from the very beginning and that he had been issued various warnings/show cause notices for his misconduct in the past vide letters dated 5.9.2002 (warning) and show cause notice dated 19.9.2007. Since, the petitioner had indulged in the acts of willful insubordination, habitual breach of law, disorderly behavior during working hours, committing acts subversive of discipline, striking work, inciting others to go on strike, he had been served with chargesheet dated 30.9.2008 calling for his written explanation which he submitted vide letter dated 4.10.2008. Having regard to the gravity of the misconduct, the petitioner had also been placed under suspension vide letter dated 25.8.2008. Since, the reply dated 4.10.2008, filed to the chargesheet, had not been found to be satisfactory, enquiry was ordered to be conducted against him. The enquiry officer, who had been appointed, was an independent person. He had explained the entire enquiry proceedings to the petitioner who, being a member of the trade union, was also defended by the representative of his own choice. It has been specifically denied that he was not afforded opportunities to cross-examine the witnesses and that documents, as alleged, had not been supplied to him during the course of enquiry. Further, the enquiry had been recorded in the language known to the petitioner and his representative and he was afforded adequate opportunity to defend himself. In this way, the enquiry had been conducted in a just and fair manner by adhering to the necessary procedure. It has been specifically denied that the enquiry officer had been biased against the petitioner and partial towards the management. Other allegations either admitted or denied.

4. By filing rejoinder, the petitioner has reiterated his own allegations by denying those of the respondent.

5. Pleadings of the parties gave rise to the following issues which were struck on 30.9.2011.

1. Whether the dismissal from the services of the petitioner with effect from 1.7.2009 is in violation of the provisions of the Industrial Disputes Act, 1947? . .*OPP*.

2. If issue no.1 is proved in affirmative to what relief the petitioner is entitled to? . .*OPP*.

3. Whether the enquiry conducted was fair and justified? . .*OPR*.

6. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no. 1 No.

Issue no. 2 Becomes redundant.

Issue no. 3 Yes.

Relief. Reference answered against the petitioner, per operative part of award.

### ***Reasons for findings***

#### ***Issue no. 1&3.***

8. Since, both these issues are interlinked and will require the discussion of common evidence, for this reason, the same are being taken up together for discussion and decision.

9. For the petitioner it has been argued that the respondent management had been biased against him, for the reason that he was the member of the Mazdoor union, which had passed a resolution to take action against one Shri Bishan Singh for his misbehavior. He further submitted that in order to settle score with him (petitioner), the respondent management had put him under suspension and chargesheeted him. In the reply, which had been filed, every alleged misconduct had been explained but despite that an enquiry was got conducted from the enquiry officer who was a legal person and under the control of the management. At the time of enquiry, the petitioner had not been supplied with the documents relied upon by the management and also the list of witnesses. The enquiry officer also did not allow the petitioner to cross-examine the witnesses of the management on account of his unnecessary interference. Further, the petitioner had also been deprived to examine his all witnesses.

10. On the other hand, learned counsel for the respondent has urged that on the basis of the misconducts of the petitioner, he had been issued chargesheet which he replied. Since, his reply had not been found to be satisfactory, an enquiry was got conducted against him as per the principles of natural justice. He further urged that the evidence, on record, clearly goes to show that the petitioner had been afforded full opportunities to cross-examine the witnesses of the management and also to lead his own evidence. He had also been assisted by a worker of his own choice in order to defend himself. In this way, it cannot be said that the enquiry against the petitioner was in violation of the principles of natural justice. Since, his alleged misconduct had been proved, he was issued show cause notice along-with copy of enquiry and on considering his reply thereto, his services were dismissed on 1.7.2009.



11. When, regard is given to the facts narrated in the petition, it is revealed that as per the petitioner he had not been supplied the documents upon which the respondent management had relied upon and also the list of witnesses. The contention of the petitioner is further to this effect that the enquiry officer was under the influence of the management and that he did not allow him (petitioner) to cross-examine the management witnesses. His another contention is that during the enquiry proceedings, he had raised various objections which were ignored by the enquiry officer. Now, it is required to be seen as to how far such contention of the petitioner gets support from the evidence, on record.

12. When, he appeared in the witness box as PW-1, he (petitioner) supported all the facts as narrated in the petition on all material, counts including that he filed a reply, Ex. PC, to the chargesheet. Ex. PB. The copy of show cause notice is Ex. PD and that of enquiry report Ex. PE. The copy of enquiry proceedings is Ex. PF. In the crossexamination, he admitted that before the commencement of enquiry, he had been issued notice, which was replied by him vide Ex. PC. Regarding the appointment of enquiry officer, he had raised objections but the same are not on the file of the case. He had joined the enquiry proceedings and had appointed Shri Tota Ram to defend him. He denied that on the enquiry proceedings dated 8.10.2008, he had signed. Again stated that the same bears his signatures. He denied that to Shri Tota Ram, he had given an authority letter to defend him. He denied that the witnesses who had been produced on behalf of the respondent management were examined in his presence. During enquiry proceedings, he had been given all the documents. In his defence, he had examined six witnesses. He admitted that Bishan Singh was Supervisor but denied that in the year, 2002, he had a quarrel with him. Self-stated that the quarrel/dispute was with the union. He denied that he had been provoking the workers of the factory but admitted that from 21.8.2008 to 24.8.2008, they had gone on strike and for this reason no work had taken place in the factory. He denied to have threatened the workers of a contractor. On 5.9.2002, he had been issued warning for misbehaving with Bishan Singh. On 16.11.2007, he had been put under suspension. He denied that later on he was admonished on tendering apology. He had received warning letter Ex. R-1 and also show cause notice Ex. R-2. Earlier, a domestic enquiry had been got conducted against him in which he was issued warning. On the completion of the enquiry, he had been issued show cause notice which he had replied and only thereafter he had been removed from service. He denied that the enquiry had been conducted impartially.

13. Shri Vijender Singh, PW-2, has appeared in the witness box to state that the petitioner is an honest and hardworking person and that a strike which had taken place in the factory was on account of the misbehavior of the employee of the company with the workers. In that strike there was no hand of the petitioner. In the crossexamination, he denied to have deposed in favour of the conduct of the petitioner for being known to him.

14. Shri Babu Ram Gupta (RW-1) has filed his affidavit, Ex. RA in his chief examination along-with authority letter Ex. RA-1. According to him, he is conversant with the facts of the case and also competent to make a statement in the Court. The work and conduct of the petitioner was not good and satisfactory from the very beginning and he had also been issued warning letter dated 5.9.2002 for his misconduct with Bishan Singh. On 18.9.2007, on account of his negligence, DBC bags got burnt and he was issued show cause notice dated 19.8.2007 and was also placed under suspension for two days. On 9.12.2007, on account of his negligence DBC bags again got burnt but he was pardoned with warning. In the year, 2008, a number of strikes had been observed by the Mazdoor Union of the factory and that on 21.8.2008, the petitioner, along-with other workers, assembled on the main gate of the factory and did not allow the workers to enter the industry. On 24.8.2008, he also threatened the workers of contractors namely Ram Krishan and Maksud Ali who were willing to join their duties. He had also abused the workers. On account of his gross misconduct, he had been placed under suspension vide letter dated 25.8.2008. Thereafter, he was served with chargesheet dated 30.9.2008, which he replied vide letter dated 4.10.2008. Since, the

reply was found to be unsatisfactory, a domestic enquiry was initiated by appointing Shri Sanjeev Vohra, from Karnal, as an enquiry officer, who had no connection with the respondent industry. The enquiry officer had conducted the enquiry in an independent and impartial manner by affording opportunity to the petitioner to get himself represented from his representative, Shri Tota Ram. In this regard, he had also given an authority letter. During enquiry proceedings, he (petitioner) had been explained the entire procedure besides having been supplied all the documents, list of witnesses etc. The management had examined four witnesses who were cross-examined by the petitioner through his authorized representative, Shri Tota Ram. In his defence, the petitioner had examined six witnesses. In the enquiry, the allegations against the petitioner stood proved as per report dated 20.1.2009 and on 9.6.2009, he was issued another show cause notice which he replied vide letter dated 20.6.2009 but the same was found unsatisfactory and accordingly he was dismissed on 1.7.2009. In the cross-examination, he admitted that the enquiry officer was appointed by the management of the company and that at that time the consent of the worker/delinquent had not been taken. He denied that the petitioner had not gone on strike. He admitted that only on the basis of the enquiry report, the petitioner was removed from service. He denied that the enquiry had not been conducted, against the petitioner, as per the rules and regulations.

15. Shri Ram Krishan (RW-2) says that his labourers used to work in the respondent factory on the basis of contract. On 24.8.2008, his labourers were stopped from entering the factory by Sawarn Kumar and other workers and they had also been threatened with dire consequences. In the cross-examination, he stated not to have lodged FIR in the Police Station regarding the alleged incident.

16. From the evidence which has been referred to above, it is highlighted that the petitioner had been engaged by the respondent company in the year, 1997 and for his alleged misconducts, he used to be given warnings/show cause notices. When, on 21.8.2008, he (petitioner) along-with other co-workers had not allowed the workers to enter the factory and on 24.8.2008, he had threatened the workers of the contractors, his such misbehavior was found to be grave misconduct and he was placed under suspension. I may mention that for the alleged misconduct, the petitioner had been issued chargesheet dated 30.9.2008, which he replied vide letter dated 4.10.2008. As the reply had not been found to be satisfactory, the respondent management considered it proper to get the alleged acts of misconduct proved against him (petitioner) by holding a domestic enquiry and for this reason an enquiry officer (Sanjeev Vohra) was appointed as is evident from the evidence of Shri Babu Ram Gupta (RW-1). His evidence further goes to show that the enquiry officer had followed all the principles of natural justice while conducting the enquiry and the petitioner, during enquiry, had been represented by Shri Tota Ram as per his wish. Here, I may mention that Ex. PF is the copy of enquiry proceedings. When regard is given to the enquiry proceedings, it is abundantly clear that for the respondent management one Shri Jagdish Singh had appeared and for the petitioner, Shri Tota Ram put his presence before the enquiry officer. It is further borne out from order sheet dated 18.10.2008, of the enquiry proceedings, that all the relevant documents had been supplied to the petitioner and in this regard there are signatures of the petitioner and his representative on the order sheet. It is also revealed from order sheet dated 25.10.2008, that the list of witnesses had been supplied to the petitioner. Enquiry proceedings further goes to show that witnesses who had been produced by the respondent management were cross-examined on behalf of the petitioner by his representative, Shri Tota Ram. In support of his evidence, the petitioner had examined six witnesses. There is nothing, on record, which could go to show that, in writing, the petitioner had made any objections to the management against the appointment and conduct of the enquiry officer. Even, when regard is given to the evidence of the petitioner (PW-), it is abundantly clear that he admits that during enquiry proceedings, he had appeared and appointed Shri Tota Ram as his representative. His evidence further goes to show that he had been afforded opportunities to cross-examine the witnesses of the management and also examined witnesses in support of his defence. This clearly goes to show that the enquiry officer,

before conducting the enquiry, had explained to the petitioner all the procedure regarding the enquiry and afforded him full opportunity to defend himself. Since, charges against the petitioner stood proved during enquiry proceedings, the enquiry officer gave his report, copy of which is Ex. PE. Thereafter, the petitioner had been issued second show cause notice which he had replied as is evident from his cross-examination. The evidence, on record, clearly goes to show that the services of the petitioner w.e.f. 1.7.2009, have been dismissed on the basis of domestic enquiry which, on record, is proved to have been conducted in a legal and fair manner by following the principles of natural justice. In this way, the contention of the petitioner that his services has been dismissed on the basis of unfair enquiry does not hold good. On the other hand, the respondent succeeds in proving that the enquiry which had been got conducted against the petitioner was fair and proper.

17. Consequently, whereas my answer to issue no.1 is in “No”, my answer it is in “Yes” to issue no.3.

**Issue no. 2.**

18. Since, the petitioner has failed to prove issue no.1, this issue becomes redundant.

***Relief.***

As a sequel to my discussion/findings on the aforesaid issues, the claim of the petitioner fails and is hereby dismissed. The reference stands answered accordingly. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 17th October, 2014.

(A.S JASWAL)  
*Presiding Judge,  
Industrial Tribunal-cum-  
Labour Court, Shimla  
Camp at Nahan.*

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Ref. 41 of 2013

Smt Rukmani Devi V/s M/s SPA Soaps Surfactants Ltd.

22.10.2014

Present:- Sh Vishal Sharma, Advocate vice Csl. For petitioner.

None for the respondent.

For today, this case has been fixed in order to file statement of claim by the petitioner but the same has not been filed. Ld, vice Counsel has prayed for another date in order to file statement of claim. I have considered his prayer on the face of material on record. The reference from the appropriate government had been received in this Court on 6.7.2013. Thereafter, notices were issued to the parties. Although, the respondent was served in the very beginning but service could not be effected upon the petitioner. On having been sent repeated notices, the petitioner was served for 24.12.2013, on which date Shri Dalip Sharma, Advocate appeared for her. Thereafter, this case was fixed for filing of statement of claim by the petitioner and in order to do so, as many as five

24.12.2013, when Shri Dalip Sharma, Advocate for the petitioner put his presence before this Court till date i.e 22.10.2014, the petitioner has failed to file statement of Claim. In these circumstances, the prayer of Id, Vice Counsel cannot be allowed.

When, the petitioner has failed to file statement of claim despite having been repeatedly ordered by this Court, I am of the view that she is not willing to pursue her claim, arising out of the reference, which has been made to this Court by the appropriate government, as under:-

“Whether termination of the services of Smt Rukmani Devi W/o Shri Garib Dass C/o Om Dutt Sharma VPO Taksal, Tehsil Kasauli, Distt Solan HP w.e.f. 31.12.2011, by the Factory Manager M/s SPA Soaps and Surfactants, Plot No 12 A Kamli Road Khadeen Parwanoo, Tehsil Kasauli Distt Solan HP without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages. Seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

The case of the petitioner is that her services w.e.f 31.12.2012, had been terminated in violation of the provisions of the Industrial Disputes Act, 1947 and as such is illegal and Unjustified. Since, the petitioner has not shown her inclination to support her such contention, I have been left with no other alternative but to decide this reference against her which stands accordingly answered against her. Let a copy of this order/award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:

22.10.2014

Sd/-  
Presiding Judge  
Labour Court, Shimla.

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**IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL  
CUM-LABOUR COURT, SHIMLA**

Ref no. 10 of 2012.

Instituted on 24.2.2012.

Decided on. 31.10.2014.

Anil Kumar S/o Shri Chet Ram R/o Village Balhwaa, P.O Chandpur, District Bilaspur, HP.  
..Petitioner.

*VS.*

The Executive Engineer, Electrical Division no.2, HPPWD Shimla, District Shimla, HP.  
..Respondent.

*Reference under section 10 of the Industrial Disputes Act, 1947.*

For petitioner: Shri Abhender Gupta, Advocate.

For respondent: Shri Surender Negi, DY. DA.

**AWARD**

The reference for adjudication, is as under:-

***“Whether the termination of services of Shri Anil Kumar S/o Shri Chet Ram, workman R/o Vilage Balh, P.O Chandpur, District Bilaspur, HP by the Executive Engineer, Electrical Divisin NO. II HPPWD Shimla-3 w.e.f. 31.1.2002 without complying with the provisions of the Industrial Disputes Act, 1947 as alleged by the workman is legal and justified? If not, to what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”***

2. Briefly, the case of the petitioner is that he was engaged as beldar, on daily wage basis, in the month of March, 1999, in electrical sub-division, Reckong-Peo, District Kinnaur under HP PWD Division no.3, Shimla and continued as such till March, 2001, when his services were disengaged without complying with the mandatory provisions of Industrial Disputes Act, 1947 (hereinafter referred as Act). In every calendar year prior to his disengagement, he had completed 240 days. Even, the principle of last come first go was not followed by the respondent, as the persons, who were engaged with him, are still working and also his juniors have been retained besides making fresh engagements. After his disengagement, he has not been gainfully employed anywhere. Against this back-drop, a prayer has been made for his reengagement with all the consequential service benefits.

3. The petition has been contested on having raised various preliminary objections including maintainability, cause of action and that the petitioner has not approached this Court with clean hands. On merits, it has been admitted that the petitioner had been engaged, on daily wages basis, as electrical beldar, in the month of March, 1999 but it has been denied that he had completed 240 days in every calendar year. In fact, in the years, 1999 he had worked for 164 days, 2000, 199 days and 2001 for only 89 days. Further, due to non-availability of works, the services of the daily wagers, engaged by the department, were required to be disengaged and for this reason, the petitioner could not be reengaged. However, in compliance to the order of HP Administrative Tribunal, passed in OA no. 1731/2001, the petitioner was reengaged, on muster roll during December, 2001. For the reason that there had been paucity of work/funds, the services of the petitioner were required to be terminated. For this reason, he was served with one month's advance notice through registered post at his official address and also asked to collect the retrenchment compensation as per the requirements of the Act. However, the petitioner never came to collect the same. In this way, on having complied with the provisions of the Act, the services of the petitioner stood retrenched/terminated in the month of Jan., 2002. It has been denied that the respondent had flouted the principles of first come last go and that juniors to the petitioner had been retained besides making fresh engagements. On the order of Labour Court, Shimla, Smt. Rama Devi and Dharam Pal had to be employed. Other allegations denied.

4. By filing rejoinder, the petitioner has reiterated his own allegations by denying those of the respondent.

5. Pleadings of the parties gave rise to the following issues which were struck on 20.6.2013.

1. Whether the termination of services of petitioner w.e.f. 31.1.2002 without complying with the provisions of the Industrial Disputes Act, 1947 is illegal, unjustified as alleged?

..OPP.

2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to?

..OPP.

3. Whether this petition is not maintainable as alleged? . . . OPR.

4. Relief.

6. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue no.1 Yes.

Issue no.2 Entitled to reinstatement with seniority and continuity but without back wages.

Issue no.3 No.

Relief. Reference answered in favour of the petitioner, per operative part of award.

### ***Reasons for findings***

#### ***Issue no.1***

8. The reference, which has been made to this Court is regarding as to whether the services of the petitioner had been terminated in violation of the provisions of the Act *w.e.f.* 31.1.2002. When regard is given to the facts narrated in the statement of claim, filed by the petitioner, it has been alleged that he had continued to remain, in service, on daily wage basis, till March, 2001, when his services were disengaged. In the reply, which has been filed by the respondent, it has been categorically mentioned that in compliance to the order of administrative Tribunal, in OA no. 1731/2001, the petitioner had to be reengaged on muster roll during December, 2001 but later on, due to paucity of work/funds, his services were terminated, in the month of Jan., 2002, on having complied with the provisions of section 25-F of the Act as he was served with one month's advance notice through registered post and also asked to collect the retrenchment. **As, this Court is required to answer the reference, made by the appropriate government, it needs to be looked into as to whether the services of the petitioner have been illegally terminated *w.e.f.* Jan., 2002, without having complied with the provisions of the Act or not.**

9. Before, I proceed further, I may mention that when the respondent had deemed it proper to have complied with the provisions of section 25-F of the Act, it goes to show that there was no dispute between the parties regarding this fact as to whether the petitioner had completed 240 working days in twelve calendar months preceding his termination or not I may also like to point-out that, on record, the petitioner has brought the copy of order dated 2.11.2001, passed by the Administrative Tribunal in OA no. 1731/2001, which goes to show that the earlier termination of the petitioner *w.e.f.* March, 2001, had been held to be in violation of the provisions of section 25-F of the Act because, on record, it stood proved that the applicant had completed 240 days in the each preceding twelve calendar months. In these circumstances, the defence which has been taken by the respondent, in its reply, that the petitioner had not completed 240 days in any of the calendar years from the date of his engagement till disengagement, does not hold good.

10. Now, the question arises as to whether the services of the petitioner had been terminated *w.e.f.* 31.1.2002 on having complied with the provisions of section 25-F or not.

11. It has been stated by Shri Naresh Pal (RW-1) that the services of the petitioner had to be terminated in the month of March, 2001, on account of paucity of funds/works. However, on the order of the Tribunal, he was reengaged in the month of December, 2001. Since, the paucity of

funds/works still exited, a notice, copy of which is Ex. RW-1/D, as required under section 25-F of the Act, was issued to the petitioner as per which he was informed to collect the compensation. The said notice had been sent through registered post, the copy of postal receipt of which is Ex. RW-1/C. In this way, the services of the petitioner were terminated on having complied with the provisions of the Act. After his retrenchment, no fresh engagements were made. The department has also not kept, in service, any person junior to the petitioner. As far as Rama Devi and Dharam Dutt are concerned, they had to be reengaged on the orders of Labour Court, Shimla. In the cross-examination, he stated that the termination notice had been sent to the petitioner in the month of December, 2001 through registered post and in the notice, he had been asked to collect the compensation. The petitioner had not turned up to collect the compensation till date. Along-with retrenchment notice, no compensation had been sent.

12. From the evidence of Shri Naresh Pal (RW-1), it is revealed that the petitioner had been sent notice through registered post in the month of December, 2001 but along-with it, no compensation had been sent/given. The evidence further goes to show that in the notice, it had been mentioned that the petitioner was required to collect the retrenchment compensation. In **Roop Narain Shukla Vs. Ld. Presiding Officer, Industrial Tribunal Haryana and others, 1997 (7) SLR 524, it has been held by the Hon'ble Punjab & Haryana High Court that:** mere intimation to the workman that he should collect his dues from the office on any working day is not enough compliance of the provisions of section 25-F of the Act.”

13. In the instant case the petitioner, through notice, copy of which is Ex. RW-1/D, had been informed to collect the retrenchment compensation during office hours. I may mention that non-compliance of the pre-conditions of the mandatory provisions of section 25-F of the Act render the retrenchment invalid and inoperative. It is further to be noted that as per the pre-conditions of the said section (25-F), at the time of retrenchment, one month's pay, in lieu of notice and the retrenchment compensation is required to be paid to the retrenched workman. In the instant case, although, a notice had been issued to the petitioner in the month of December, 2001 (20.12.2001) and that his services stood terminated w.e.f. 31.1.2002, but as is evident, from the material on record, he had not been paid the retrenchment compensation. The **Hon'ble Apex Court in 2010 (3) SLR 663, Anoop Sharma Vs. Executive engineer, Public Health Division No.1 Panipat Haryana has held that:** Clause (b) of section 25-F expressly provides for the payment of compensation being made at the time of retrenchment and by implication it would be permissible to pay the same before retrenchment. Payment or tender of compensation after the time when the retrenchment has taken effect would vitiate the retrenchment and non-compliance with the mandatory provision which has a beneficial purpose and a public policy behind it would result in nullifying the retrenchment.”

14. In the instant case, as already observed, the petitioner had not been paid retrenchment compensation on 31.1.2002, when his services stood terminated consequent upon the issuance of one month's notice under section 25-F of the Act. Since, the respondent violated clause (b) of section 25-F of the Act, the retrenchment of the petitioner w.e.f. 31.1.2002, is required to be held invalid and illegal.

15. Consequently, for what has been stated and observed above, I hold that the termination of the services of the petitioner w.e.f. 31.1.2002, was in violation of the provisions of the Act (25-F) and for this reason it is illegal and unjustified. Thus, my answer to this issue is in “Yes”.

## **Issue no. 2**

16. *It has been held by the Hon'ble Supreme Court in 2010 (1) SLJ S.C 70, M/s Ritu Marbals Vs. Prabhakant Shukla that “full back wages cannot be granted mechanically, upon a order of termination be declared illegal. It is further held that reinstatement must no be*

***accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry”.***

However, since the services of the petitioner had stood terminated in contravention of the provisions of the Act, I hold that he is entitled to reinstatement in service with seniority and continuity but without back wages. Thus, my answer to this issue is in “Yes” accordingly.

### ***Issue no. 3***

17. The contention of the respondent is to this effect that this petition is not legally maintainable because the same has been hit by delay and laches. It is noted that when the services of the petitioner were initially disengaged *w.e.f.* March, 2001, he had approached the Administrative Tribunal and in consequence of the order passed thereto, he was reengaged. When, his services were again disengaged/terminated by issuing notice under section 25-F of the Act, the copy of which is Ex. RW-1/D, he made a representation for his reengagement on 5.1.2002, vide mark A. The perusal of the record further goes to show that against his retrenchment, he had raised a demand notice on 4.3.2005. It is further borne out that when the Labour Commissioner, HP, refused to make a reference to the Labour Court, on 28.12.2006, the petitioner had to file writ petition (CWP No. 1761 of 2007) before the Hon’ble High Court. As per order dated 23.12.2011, of the Hon’ble High Court, order dated 28.12.2006, of the Labour Commissioner, HP was quashed and set aside and State of HP through Labour Commissioner was directed to make a reference to the Labour Court. In this way, the present reference has been caused to be made to this Court, by the Labour Commissioner, consequent upon the order of the Hon’ble High Court. When, such is the situation, it cannot be said that the claim petition which has been filed by the petitioner consequent upon the receipt of reference, in this Court, is not maintainable. By holding it to be maintainable, my answer to this issue is in “No”.

### ***Relief.***

As a sequel to my discussion/findings on the aforesaid issues, the claim of the petitioner is allowed and as such he is ordered to be reinstated in service from the date of his termination i.e 31.1.2002, with seniority and continuity but without back wages. The reference stands answered accordingly. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 31st October, 2014.

(A.S JASWAL)  
Presiding Judge,  
Industrial Tribunal-cum-  
Labour Court, Shimla.

शहरी विकास विभाग

अधिसूचना

शिमला-2, 8 दिसम्बर, 2014

**संख्या: यू0 डी0-ए (1)-1/2014.**—हिमाचल प्रदेश की राज्यपाल, प्रस्तावित करती हैं कि संलग्न अनुसूची में यथा विनिर्दिष्ट क्षेत्रों को, हिमाचल प्रदेश नगरपालिका अधिनियम, 1994 की धारा 4 के अधीन, ज्वाली, जिला कांगड़ा, हिमाचल प्रदेश को नगर पंचायत के रूप में वर्गीकृत किए जाने हेतु उक्त क्षेत्र के



बेहतर विकास और सुव्यवस्थित व्यवस्था के लिए, पूर्वोक्त अधिनियम की धारा 3 की उप-धारा (2) के अधीन नगरपालिका गठित किए जाने के आशय से, नगरपालिका क्षेत्र के रूप में घोषित किया जाना चाहिए।

उक्त अनुसूची में विनिर्दिष्ट क्षेत्र के निवासियों से नगर पंचायत ज्वाली की प्रस्तावित घोषणा के सम्बन्ध में अपने-अपने आक्षेप/सुझाव, यदि कोई हों, प्रस्तुत करने की एतद् द्वारा अपेक्षा की जाती है और ऐसे आक्षेप/सुझाव, इस अधिसूचना के राजपत्र, हिमाचल प्रदेश में प्रकाशन की तारीख से छह सप्ताह की अवधि के भीतर, उपायुक्त, कांगड़ा के माध्यम से अतिरिक्त मुख्य सचिव (शहरी विकास), हिमाचल प्रदेश सरकार को लिखित में प्रस्तुत किए जाने चाहिए।

ऊपर नियत अवधि के अवसान के पश्चात् कोई भी आक्षेप, जो भी हो, स्वीकार नहीं किए जाएंगे।

आदेश द्वारा,  
हस्ताक्षरित/—  
अति० मुख्य सचिव (शहरी विकास)।

### अनुसूची

क्रम संख्या	मोहाल	हदबस्त नम्बर	खसरा नम्बर	क्षेत्र
1.	ज्वाली खास	62	1-1313/1267	67-95
2.	सुनेहड़	63	1-1141	117-07
3.	बसन्तपुर	61	1-280	23-70
4.	कैहरियां	41	1-2791	202-06
5.	लव	40	1-813	41-65
6.	भनेई	27	1-639	43-46
7.	भोल	26	1-474	47-50
8.	मकड़ाहन	25	1-1136	73-08
9.	पतन	24	1-303	37-16
10.	ढन	23	1-1928	173-88
11.	टयुकरी	39	397-443, 600 — 444-601— 444, 445, 447, 602/448, 603/448, 649, 604/650, 605/650, 651 — 671, 648 /672, 649/672, 485, 487 —520, 606/539/521, 607 /589/521, 522 — 525, 608/526, 609/526, 527 — 533, 590/534, 591/ 534, 597/535/536 — 567, 610/568, 611/568, 612 /568, 569 — 575 Kita —191	18-85-82.
			कुल क्षेत्र	27-16-33 हेक्टेयर

[Authoritative English text of the Government Notification No. UD-A(1)-1/2014, dated 8.12.2014 as required under clause (3) of Article 348 of the Constitution of India.]

## URBAN DEVELOPMENT DEPARTMENT

### NOTIFICATION

*Shimla-2, the 8<sup>th</sup> December, 2014*

**No. UD-A(1)-1/2014.**—The Governor of Himachal Pradesh is pleased to propose that the areas as specified in the Schedule enclosed, should be declared as municipal area under section 4 of the Himachal Pradesh Municipal Act, 1994 in order to constitute a municipality under sub-section (2) of section 3 of the Act *ibid* to be classified as Nagar Panchayat at Jawali, District Kangra, H.P. for better development and improved arrangement in the said area.

The inhabitants of the area specified in the said schedule are hereby called upon to submit their objections/suggestions, if any, to the proposed declaration of Nagar Panchayat, Jawali and such objections/suggestions should be submitted to the Addl. Chief Secretary (Urban Development) to the Government of Himachal Pradesh in writing through the Deputy Commissioner, Kangra within a period of six weeks from the date of publication of this notification in the Rajpatra, Himachal Pradesh.

After the expiry of above stipulated period, no objections, whatsoever will be entertained.

By order,  
Sd/-  
Addl. Chief Secretary (U.D.).

### Schedule

Sl. No.	Mohal	Hadba st No.	Khasra No.	Area in Hac.
1.	Jawali Khas	62	1-1313/1267	67-95
2	Sunehar	63	1-1141	117-07
3	Basantpur	61	1-280	23-70
4.	Kehriyan	41	1-2791	202-06
5.	Lav	40	1-813	41-65
6.	Bhanai	27	1-639	43-46
7.	Bhol	26	1-474	47-50
8.	Makrahan	25	1-1136	73-08
9.	Pattan	24	1-303	37-16
10.	Dhan	23	1-1928	173-88
11.	Tyukari	39	397-443, 600 / 444 - 601 / 444, 445, 447, 602 / 448, 603 / 448, 649, 604 / 650, 605 / 650, 651 - 671, 648 / 672, 649 / 672, 485, 487 - 520, 606 / 539 / 521, 607 / 589 / 521, 522 - 525, 608 / 526, 609 / 526, 527 - 533, 590 / 534, 591 / 534, 597 /	18-85-82

			535, 536 - 567, 610 / 568, 611 / 568, 612 / 568, 569 - 575 Kita -191	
		<b>Total Area</b>		<b>27-16-33 Hac.</b>

ब अदालत श्री डी० सी० ठाकुर, कार्यकारी दण्डाधिकारी, बैजनाथ, जिला कांगड़ा (हि० प्र०)

श्री रवि शर्मा पुत्र श्री वाम देव, निवासी गांव व डा० कुडैल, तहसील बैजनाथ, जिला कांगड़ा (हि० प्र०)।

बनाम

आम जनता

प्रार्थना-पत्र जेर धारा 13(3) जन्म एवम् मृत्यु पंजीकरण अधिनियम, 1969.

श्री रवि शर्मा पुत्र श्री वाम देव, निवासी गांव व डा० कुडैल, तहसील बैजनाथ, जिला कांगड़ा (हि० प्र०) ने इस अदालत में प्रार्थना-पत्र गुजारा है कि उसके पुत्र सुमित शर्मा का जन्म दिनांक 30-7-1992 को महाल कुडैल में हुआ था परन्तु इस बारे पंचायत के रिकॉर्ड में पंजीकरण नहीं करवाया जा सका। अब पंजीकरण करने के आदेश दिये जायें।

अतः इस नोटिस के माध्यम से सर्वसाधारण को सूचित किया जाता है कि यदि किसी व्यक्ति को उपरोक्त पंजीकरण के बारे में कोई उजर/एतराज हो तो वह दिनांक 16-1-2015 को सुबह 10.00 बजे इस न्यायालय में असालतन या वकालतन हाजिर आकर पेश कर सकता है अन्यथा उपरोक्त जन्म का पंजीकरण करने के आदेश दे दिये जायेंगे। उसके उपरान्त कोई एतराज न सुना जायेगा।

आज दिनांक 2-12-2014 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी हुआ।

मोहर।

हस्ताक्षरित / -  
कार्यकारी दण्डाधिकारी,  
बैजनाथ, जिला कांगड़ा (हि० प्र०)।

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ब अदालत श्री लेख राम धीमान, ना० तहसीलदार एवं कार्यकारी दण्डाधिकारी, बैजनाथ, जिला कांगड़ा (हि० प्र०)

श्रीमती निहातू देवी पुत्री श्री प्रभदयाल, निवासी डूहक (गवाल), तहसील बैजनाथ, जिला कांगड़ा (हि० प्र०)

बनाम

आम जनता

प्रार्थना-पत्र जेर धारा 13(3) जन्म एवम् मृत्यु पंजीकरण अधिनियम, 1969.

श्रीमती निहातू देवी पुत्री श्री प्रभदयाल, निवासी डूहक, डाकखाना गवाल, तहसील बैजनाथ, जिला कांगड़ा (हि० प्र०) ने इस अदालत में प्रार्थना-पत्र गुजारा है कि उसका जन्म दिनांक 15-9-1955 को महाल

डूहक में हुआ था परन्तु इस बारे पंचायत के रिकॉर्ड में पंजीकरण नहीं करवाया जा सका। अब पंजीकरण करने के आदेश दिये जायें।

अतः इस नोटिस के माध्यम से सर्वसाधारण को सूचित किया जाता है कि यदि किसी व्यक्ति को उपरोक्त पंजीकरण के बारे में कोई उजर/एतराज हो तो वह दिनांक 27-12-2014 को सुबह 10.00 बजे इस न्यायालय में असालतन या वकालतन हाजिर आकर पेश कर सकता है अन्यथा उपरोक्त जन्म का पंजीकरण करने के आदेश दे दिये जायेंगे। उसके उपरान्त कोई एतराज न सुना जायेगा।

आज दिनांक 18-11-2014 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी हुआ।

मोहर।

लेख राम धीमान,  
ना0 तहसीलदार एवं कार्यकारी दण्डाधिकारी,  
बैजनाथ, जिला कांगड़ा (हि0 प्र0)।

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ब अदालत श्री डी0 सी0 ठाकुर, तहसीलदार एवं कार्यकारी दण्डाधिकारी, बैजनाथ, जिला कांगड़ा (हि0 प्र0)

श्री अमर बहादुर पुत्र श्री सन्तमान गुरंग, निवासी सेहल, तहसील बैजनाथ, जिला कांगड़ा (हि0 प्र0)।

बनाम

आम जनता

प्रार्थना-पत्र जेर धारा 13(3) जन्म एवम् मृत्यु पंजीकरण अधिनियम, 1969.

श्री अमर बहादुर पुत्र श्री सन्तमान गुरंग, निवासी सेहल, डाकखाना सेहल, तहसील बैजनाथ, जिला कांगड़ा (हि0 प्र0) ने इस अदालत में प्रार्थना-पत्र गुजारा है कि उसके पुत्र प्रकाश बहादुर का जन्म दिनांक 6-6-1992 को महाल सेहल में हुआ था परन्तु इस बारे पंचायत के रिकॉर्ड में पंजीकरण नहीं करवाया जा सका। अब पंजीकरण करने के आदेश दिये जायें।

अतः इस नोटिस के माध्यम से सर्वसाधारण को सूचित किया जाता है कि यदि किसी व्यक्ति को उपरोक्त पंजीकरण के बारे में कोई उजर/एतराज हो तो वह दिनांक 1-1-2015 को सुबह 10.00 बजे इस न्यायालय में असालतन या वकालतन हाजिर आकर पेश कर सकता है अन्यथा उपरोक्त जन्म का पंजीकरण करने के आदेश दे दिये जायेंगे। उसके उपरान्त कोई एतराज न सुना जायेगा।

आज दिनांक 29-11-2014 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी हुआ।

मोहर।

डी0 सी0 ठाकुर,  
तहसीलदार एवं कार्यकारी दण्डाधिकारी,  
बैजनाथ, जिला कांगड़ा (हि0 प्र0)।

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ब अदालत श्री डी0 सी0 ठाकुर, तहसीलदार एवं कार्यकारी दण्डाधिकारी, बैजनाथ,  
जिला कांगड़ा (हि0 प्र0)

श्री बलवीर सिंह पुत्र श्री दुनीचन्द, निवासी सकड़ी, तहसील बैजनाथ, जिला कांगड़ा (हि0 प्र0)।

बनाम

## आम जनता

प्रार्थना-पत्र जेर धारा 13(3) जन्म एवम् मृत्यु पंजीकरण अधिनियम, 1969.

श्री बलवीर सिंह पुत्र श्री दुनीचन्द, निवासी सकड़ी, डाकखाना सकड़ी, तहसील बैजनाथ, जिला कांगड़ा (हि0 प्र0) ने इस अदालत में प्रार्थना-पत्र गुजारा है कि उसकी पत्नी श्रीमती निकिता देवी की मृत्यु दिनांक 18-10-2013 को महाल सकड़ी में हुई थी परन्तु इस बारे पंचायत के रिकॉर्ड में पंजीकरण नहीं करवाया जा सका। अब पंजीकरण करने के आदेश दिये जायें।

अतः इस नोटिस के माध्यम से सर्वसाधारण को सूचित किया जाता है कि यदि किसी व्यक्ति को उपरोक्त पंजीकरण के बारे में कोई उजर/एतराज हो तो वह दिनांक 1-1-2015 को सुबह 10.00 बजे इस न्यायालय में असालतन या वकालतन हाजिर आकर पेश कर सकता है अन्यथा उपरोक्त मृत्यु का पंजीकरण करने के आदेश दे दिये जायेंगे। उसके उपरान्त कोई एतराज न सुना जायेगा।

आज दिनांक 18-11-2014 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी हुआ।

मोहर।

डी0 सी0 ठाकुर,  
तहसीलदार एवं कार्यकारी दण्डाधिकारी,  
बैजनाथ, जिला कांगड़ा (हि0 प्र0)।

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ब अदालत श्री लेख राम धीमान, नायब तहसीलदार एवं कार्यकारी दण्डाधिकारी, बैजनाथ,  
जिला कांगड़ा (हि0 प्र0)

श्री ज्ञान चन्द पुत्र श्री सूंका राम, निवासी चलूही, डा0 रजौट, तहसील बैजनाथ, जिला कांगड़ा (हि0 प्र0)।

बनाम

आम जनता

प्रार्थना-पत्र जेर धारा 13(3) जन्म एवम् मृत्यु पंजीकरण अधिनियम, 1969.

श्री ज्ञान चन्द पुत्र श्री सूंका राम, निवासी चलूही, डा0 रजौट, तहसील बैजनाथ, जिला कांगड़ा (हि0 प्र0) ने इस अदालत में प्रार्थना-पत्र गुजारा है कि उसकी माता श्रीमती प्रेमी देवी की मृत्यु दिनांक 18-9-2007 को महाल चलूही में हुई थी परन्तु इस बारे पंचायत के रिकॉर्ड में पंजीकरण नहीं करवाया जा सका। अब पंजीकरण करने के आदेश दिये जायें।

अतः इस नोटिस के माध्यम से सर्वसाधारण को सूचित किया जाता है कि यदि किसी व्यक्ति को उपरोक्त पंजीकरण के बारे में कोई उजर/एतराज हो तो वह दिनांक 16-1-2015 को सुबह 10.00 बजे इस न्यायालय में असालतन या वकालतन हाजिर आकर पेश कर सकता है अन्यथा उपरोक्त जन्म का पंजीकरण करने के आदेश दे दिये जायेंगे। उसके उपरान्त कोई एतराज न सुना जायेगा।

आज दिनांक 6-12-2014 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी हुआ।

मोहर।

श्री लेख राम धीमान,  
कार्यकारी दण्डाधिकारी,  
बैजनाथ, जिला कांगड़ा (हि0 प्र0)।

मुकद्दमा शीर्षक :

श्री राज कुमार पुत्र व श्रीमती कौशल्या देवी पत्नी स्वर्गीय श्री नेत्र सिंह, निवासी व डा0 टौर-जाजर, उप-तहसील धर्मपुर, जिला मण्डी (हि0 प्र0)।

बनाम

श्री टेक चन्द पुत्र शेरु व बिटू पुत्र व श्रीमती अमीता देवी, बबली देवी, सीमा देवी पुत्रियां श्रीमती ब्रह्मी देवी व हरि सिंह पुत्र टोडर व दूनी चन्द पुत्र जीता व कशमरी सिंह, बालम राम, अशोक पाल, बसन्त सिंह, बलवन्त सिंह पुत्रगण हिरदा राम व केदार सिंह पुत्र चमारु राम व इन्द्र पाल पुत्र व रुप लाल पुत्र गुसाई व टेक चन्द पुत्र किशन, सन्तोष कुमार, देश राज पुत्रगण हरी सिंह व कपिल देव पुत्र हिरा व नानक चन्द, बंशी लाल पुत्रगण व श्रीमती फूला देवी, सवीत्री देवी, नीमा देवी पुत्रियां शेरु पुत्र श्री हिरदा राम समस्तगण निवासी व डा0 टौर-जाजर, उप-तहसील धर्मपुर, जिला मण्डी (हि0 प्र0)।

प्रार्थी उपरोक्त ने इस न्यायालय में भूमि खाता/खतौनी नं0 5/33, कित्ता 96, रकबा तादादी 02-39-37 है0 महाल टौर-जाजर की तकसीम हेतु प्रार्थना-पत्र दिया है। फरीकदोयम को इस न्यायालय द्वारा समन जारी किए गये परन्तु इस पर तामील समन साधारण तरीके से नहीं हो रही है। अतः फरीकदोयम उपरोक्त को एतराज हो तो वह असालतन या वकालतन तिथि 28-1-2015 को प्रातः 10.00 बजे उपस्थित होकर न्यायालय में पेश करें। अन्यथा गैर हाजिरी की सूरत में कार्यवाही अमल में लाई जायेगी।

आज दिनांक 3-12-2014 को मेरे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

हस्ताक्षरित/-  
सहायक समाहर्ता द्वितीय श्रेणी,  
धर्मपुर, जिला मण्डी, हिमाचल प्रदेश।

न्यायालय सहायक समाहर्ता द्वितीय श्रेणी, धर्मपुर, जिला मण्डी (हि0 प्र0)

मुकद्दमा शीर्षक :

श्री राज कुमार पुत्र व श्रीमती कौशल्या देवी पत्नी स्वर्गीय श्री नेत्र सिंह, निवासी व डा0 टौर-जाजर, उप-तहसील धर्मपुर, जिला मण्डी (हि0 प्र0)।

बनाम

श्री लाल सिंह पुत्र मौनी राम, अमर सिंह पुत्र त्रहडू, टेक चन्द पुत्र शेरु व नानक चन्द, बंशी लाल पुत्रगण व श्रीमती फूला देवी, सवीत्री देवी, नीमा देवी पुत्रियां शेरु पुत्र श्री हिरदा राम व बिटू पुत्र व श्रीमती अमीता देवी, बबली देवी, सीमा देवी पुत्रियां श्रीमती ब्रह्मी देवी व हरि सिंह पुत्र टोडर व देश राज पुत्र रुप चन्द व शाली ग्राम पुत्र लाला व अमर सिंह पुत्र गुरिया व नन्द लाल पुत्र विद्यासागर व कशमीर सिंह पुत्र हिरदा व रोशन लाल, दलीप सिंह पुत्र व श्रीमती जैबन्ती, मली पुत्रियां व श्रीमती कला देवी पत्नी स्वर्गीय मौनी समस्तगण निवासी व डा0 टौर-जाजर, उप-तहसील धर्मपुर, जिला मण्डी (हि0 प्र0)।

प्रार्थी उपरोक्त ने इस न्यायालय में भूमि खाता/खतौनी नं० 6/34 ता 42, कित्ता 127, रकबा तादादी 02-11-04 है० महाल टौर-जाजर की तकसीम हेतु प्रार्थना-पत्र दिया है। फरीकदोयम को इस न्यायालय द्वारा समन जारी किए गये, परन्तु इस पर तामील समन साधारण तरीके से नहीं हो रही है। अतः फरीकदोयम उपरोक्त को एतराज हो तो वह असालतन या वकालतन तिथि 28-1-2015 को प्रातः 10.00 बजे उपस्थित होकर न्यायालय में पेश करें। अन्यथा गैर हाजिरी की सूरत में कार्यवाही अमल में लाई जायेगी।

आज दिनांक 3-12-2014 को मेरे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

हस्ताक्षरित /—  
सहायक समाहर्ता द्वितीय श्रेणी,  
धर्मपुर, जिला मण्डी, हिमाचल प्रदेश।

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**In the Court of Shri G. C. Negi, H.A.S., Sub-Divisional Magistrate, Shimla (Urban),  
District Shimla, Himachal Pradesh**

Shri Kailash Chand s/o Late Shri Ram Dev, r/o Dedenim Cottage Near Portmore School,  
Tehsil & District Shimla, Himachal Pradesh .. Applicant.

*Versus*

General Public

.. Respondent.

*Application under section 13 (3) of Birth and Death Registration Act, 1969.*

Whereas, Shri Kailash Chand s/o Late Shri Ram Dev, r/o Dedenim Cottage Near Portmore School, Tehsil & District Shimla, Himachal Pradesh has preferred an application to the undersigned for the registration of name and date of birth of his son namely Vineet Gour date of birth 5-11-1998 in the record of Municipal Corporation, District Shimla (H. P.).

Therefore, by this proclamation, the general public is hereby informed that any person having any objection for entry as to date of birth mentioned above, may submit his/her objection in writing in this court with in one month from the publication of this proclamation failing which no objection will be entertained after expiry of date and will be decided accordingly.

Given under my hand and the seal of the Court on this 8<sup>th</sup> day of December, 2014.

Seal.

G. C. NEGI,  
Sub-Divisional Magistrate, Shimla (Urban),  
District Shimla, Himachal Pradesh.

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**In the Court of Shri G. C. Negi, H.A.S., Sub-Divisional Magistrate, Shimla (Urban),  
District Shimla, Himachal Pradesh**

Shri Kailash Chand s/o Late Shri Ram Dev, r/o Dedenim Cottage Near Portmore School,  
Tehsil & District Shimla, Himachal Pradesh .. Applicant.

*Versus*

General Public

.. Respondent.

*Application under section 13 (3) of Birth and Death Registration Act, 1969.*

Whereas, Shri Kailash Chand s/o Late Shri Ram Dev, r/o Dedenim Cottage Near Portmore School, Tehsil & District Shimla, Himachal Pradesh has preferred an application to the undersigned for the registration of name and date of birth of his son namely Pankaj Gour date of birth 6-8-1997 in the record of Municipal Corporation, District Shimla (H. P.).

Therefore, by this proclamation, the general public is hereby informed that any person having any objection for entry as to date of birth mentioned above, may submit his/her objection in writing in this court with in one month from the publication of this proclamation failing which no objection will be entertained after expiry of date and will be decided accordingly.

Given under my hand and the seal of the Court on this 8<sup>th</sup> day of December, 2014.

Seal.

G. C. NEGI,  
Sub-Divisional Magistrate, Shimla (Urban),  
District Shimla, Himachal Pradesh.

**In the Court of Shri G. C. Negi, H.A.S., Sub-Divisional Magistrate, Shimla (Urban),  
District Shimla, Himachal Pradesh**

Shri Hira Lal s/o Shri Bal Singh, r/o Set No. 35, Type-I, Block No. 5, Kareru Servant Quarters, Long Wood, Shimla, Himachal Pradesh .. Applicant.

*Versus*

General Public

.. Respondent.

*Application under section 13 (3) of Birth and Death Registration Act, 1969.*

Whereas, Shri Hira Lal s/o Shri Bal Singh, r/o Set No. 35, Type-I, Block No. 5, Kareru Servant Quarters, Long Wood, Shimla, Himachal Pradesh has preferred an application to the undersigned for the registration of name and date of birth of his son namely Chet Ram date of birth 22-2-1989 in the record of Municipal Corporation, District Shimla (H. P.).

Therefore, by this proclamation, the general public is hereby informed that any person having any objection for entry as to date of birth mentioned above, may submit his/her objection in writing in this court from one month from the publication of this proclamation failing which no objection will be entertained after expiry of date and will be decided accordingly.

Given under my hand and the seal of the Court on this 25<sup>th</sup> day of Nov., 2014.

Seal.

G. C. NEGI,  
Sub-Divisional Magistrate, Shimla (Urban),  
District Shimla, Himachal Pradesh.



ब अदालत श्री नरेश कुमार, उप-मण्डलाधिकारी (ना0) चौपाल, जिला शिमला (हि0 प्र0)

श्री लायक राम पुत्र श्री दिला राम, निवासी गांव बोधना, डाकखाना व तहसील चौपाल, जिला शिमला (हि0 प्र0) वादी।

बनाम

1. आम जनता
2. प्रधान ग्राम पंचायत चांजू, चौपाल प्रतिवादी।

विषय.—श्री लायक राम के बेटे का नाम व जन्म तिथि पंचायत रजिस्टर में दर्ज करवाने हेतु अधीन धारा 13(3) जन्म व मृत्यु पंजीकरण अधिनियम, 1969 के अन्तर्गत जन्म के पंजीकरण करने बारे।

हर खास व आम जनता को बजिरया इश्तहार सूचित किया जाता है कि अधोहस्ताक्षरी के कार्यालय में वादी श्री लायक राम ने आवेदन प्रस्तुत किया है कि उसने ग्राम पंचायत चांजू, चौपाल के पंजीकरण रजिस्टर में अपने बेटे का नाम दर्ज नहीं करवाया है जिसे कि अब दर्ज करवाना चाहता है जोकि निम्न है:—

अंकुश कुमार (पुत्र) जन्म 27-6-1989.

इसलिए ग्राम पंचायत चांजू, चौपाल, तहसील चौपाल की जनता को बजिरया इश्तहार सूचित किया जाता है कि यदि किसी व्यक्ति को उपरोक्त जन्म पंजीकरण बारे कोई आपत्ति हो तो वह दिनांक 5-1-2015 को या इससे पूर्व असालतन या वकालतन हाजिर अदालत आकर अपनी आपत्ति प्रस्तुत करें अन्यथा आवेदन पत्र पर जन्म पंजीकरण आदेश पारित करके सचिव ग्राम पंचायत चांजू, चौपाल को आगामी कार्यवाही हेतु भेजा जायेगा।

आज दिनांक 3-12-2014 को मेरे हस्ताक्षर व मोहर सहित अदालत से जारी किया गया।

मोहर

नरेश कुमार,  
उप-मण्डलाधिकारी (ना0),  
चौपाल, जिला शिमला (हि0 प्र0)।

ब अदालत श्री नरेश कुमार, उप-मण्डलाधिकारी (ना0) चौपाल, जिला शिमला (हि0 प्र0)

श्री देवी सिंह पुत्र श्री केसू, गांव बजाह, डाकघर टिक्करी, तहसील चौपाल, जिला शिमला (हि0 प्र0) वादी।

बनाम

1. आम जनता
2. प्रधान ग्राम टिक्करी-नेवल, तहसील चौपाल प्रतिवादी।

विषय.—श्री देवी सिंह पुत्र श्री केसू के बच्चों का नाम ग्राम पंचायत रजिस्टर में दर्ज करवाने हेतु अधीन धारा 13(3) जन्म व मृत्यु पंजीकरण अधिनियम, 1969 के अन्तर्गत जन्म के पंजीकरण करने बारे।

हर खास व आम जनता को बजिरया इश्तहार सूचित किया जाता है कि अधोहस्ताक्षरी के कार्यालय में वादी श्री देवी सिंह ने आवेदन प्रस्तुत किया है कि उसने ग्राम पंचायत टिक्करी-नेवल के पंजीकरण रजिस्टर में अपने बच्चों का नाम दर्ज नहीं करवाया है जिसे कि अब दर्ज करवाना चाहता है जोकि निम्न प्रकार से है:—

क्रम संख्या	नाम	सम्बन्ध	जन्म की तिथि
1.	प्रियंका	पुत्री	7-1-1999
2.	हेमंत अजटा	पुत्र	17-3-2000
3.	अजय अजटा	पुत्र	28-12-2001

इसलिए ग्राम पंचायत टिक्करी-नेवल, तहसील चौपाल की जनता को बजरिया इश्तहार सूचित किया जाता है कि यदि किसी व्यक्ति को उपरोक्त जन्म पंजीकरण बारे कोई आपत्ति हो तो वह दिनांक 5-1-2015 को या इससे पूर्व असातन या वकालतन हाजिर अदालत आकर अपनी आपत्ति प्रस्तुत करें अन्यथा आवेदन पत्र पर जन्म पंजीकरण आदेश पारित करके सचिव ग्राम पंचायत टिक्करी-नेवल को आगामी कार्यवाही हेतु भेजा जायेगा।

आज दिनांक 3-12-2014 को मेरे हस्ताक्षर व मोहर सहित अदालत से जारी किया गया।

मोहर

नरेश कुमार,  
उप-मण्डलाधिकारी (ना),  
चौपाल, जिला शिमला (हि0 प्र0)।

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**In the Court of Shri G. C. Negi, H.A.S., Sub-Divisional Magistrate, Shimla (Urban),  
District Shimla, Himachal Pradesh**

Smt. Veena Sharma w/o Shri Kanshi Ram, r/o House No. 28/3, Snow View, Sanjauli,  
Shimla, Himachal Pradesh .. *Applicant.*

*Versus*

General Public

.. *Respondent.*

*Application under section 13 (3) of Birth and Death Registration Act, 1969.*

Whereas, Smt. Veena Sharma w/o Shri Kanshi Ram, r/o House No. 28/3, Snow View, Sanjauli, Shimla, Himachal Pradesh has preferred an application to the undersigned for the registration of name and date of birth of her daughter namely Babita date of birth 11-8-1989 in the record of Municipal Corporation, District Shimla (H. P.).

Therefore, by this proclamation, the general public is hereby informed that any person having any objection for entry as to date of birth mentioned above, may submit his/her objection in writing in this court from one month from the publication of this proclamation failing which no objection will be entertained after expiry of date and will be decided accordingly.

Given under my hand and the seal of the Court on this 12<sup>th</sup> day of December, 2014.

Seal.

G. C. NEGI,  
*Sub-Divisional Magistrate, Shimla (Urban),  
District Shimla, Himachal Pradesh.*

वाद संख्या : 11/xiii-B-I/2014

तारीख मरजुआ : 8-12-2104

श्री रविन्द्रसिंह

बनाम

आम जनता

दरखास्त बराये दुरुस्ती नाम।

बनाम आम जनता।

हरगाह खास व आम को बजरिया नोटिस सूचित किया जाता है कि श्री रविन्द्रसिंह पुत्र श्री वीरी सिंह, निवासी महाल शकरोडी, परगना वडावल, तहसील सुन्नी, जिला शिमला (हि0 प्र0) ने इस न्यायालय में प्रार्थना-पत्र गुजार कर अभिव्यक्त किया है कि प्रार्थी का नाम राजस्व रिकॉर्ड में रविन्द्रकुमार दर्ज है, जो कि गलत है परन्तु पंचायत रिकॉर्ड, स्कूल प्रमाण-पत्र में नाम श्री रविन्द्रसिंह है जोकि सही व सत्य है। उन्होंने उसे ठीक करने के लिए प्रार्थना-पत्र प्रस्तुत किया है।

अतः इस प्रार्थना-पत्र बारे आम जनता को सूचित किया जाता है कि यदि किसी व्यक्ति को नाम दुरुस्त करने में आपत्ति हो तो वह अपनी आपत्ति लिखित रूप में दिनांक 8-1-2015 अथवा इससे पूर्व इस न्यायालय को प्रस्तुत करें। तदोपरान्त कोई आपत्ति मान्य नहीं होगी।

हमारे हस्ताक्षर व मोहर अदालत से आज दिनांक 8-12-2014 को जारी हुआ।  
मोहर।

हस्ताक्षरित/—  
सहायक समाहर्ता प्रथम/द्वितीय श्रेणी,  
सुन्नी, जिला शिमला (हि0 प्र0)।

न्यायालय सहायक समाहर्ता प्रथम/द्वितीय वर्ग, सुन्नी, जिला शिमला (हि0 प्र0)

वाद संख्या : 10/xiii-B-I/2014

तारीख मरजुआ : 8-12-2104

श्री नंतराम

बनाम

आम जनता

दरखास्त बराये दुरुस्ती नाम।

बनाम आम जनता।

हरगाह खास व आम को बजरिया नोटिस सूचित किया जाता है कि श्री नंतराम पुत्र श्री रामदयाल, निवासी महाल मण्डोड, परगना वडावल, तहसील सुन्नी, जिला शिमला (हि0 प्र0) ने इस न्यायालय में प्रार्थना-पत्र गुजार कर अभिव्यक्त किया है कि प्रार्थी का नाम राजस्व रिकॉर्ड में अनन्तराम दर्ज है, जो कि गलत है परन्तु पंचायत रिकॉर्ड, स्कूल प्रमाण-पत्र में नाम श्री नंतराम है जोकि सही व सत्य है। उन्होंने उसे ठीक करने के लिए प्रार्थना-पत्र प्रस्तुत किया है।

अतः इस प्रार्थना-पत्र बारे आम जनता को सूचित किया जाता है कि यदि किसी व्यक्ति को नाम दुरुस्त करने में आपत्ति हो तो वह अपनी आपत्ति लिखित रूप में दिनांक 8-1-2015 अथवा इससे पूर्व इस न्यायालय को प्रस्तुत करें। तदोपरान्त कोई आपत्ति मान्य नहीं होगी।

हमारे हस्ताक्षर व मोहर अदालत से आज दिनांक 8-12-2014 को जारी हुआ।  
मोहर।

हस्ताक्षरित/—  
सहायक समाहर्ता प्रथम/द्वितीय श्रेणी,  
सुन्नी, जिला शिमला (हि0 प्र0)।

ब अदालत श्री सतीश कुमार नेगी, सहायक समाहर्ता द्वितीय वर्ग, उप-तहसील रोन्हाट, जिला सिरमौर  
(हि0 प्र0)

श्री राजेश कुमार पुत्र श्री जालम सिंह, ग्राम नाया-पन्जोड, उप-तहसील रोन्हाट, जिला सिरमौर  
(हि0 प्र0)।

बनाम

आम जनता

राजस्व रिकॉर्ड में बाका मौजा नाया-पन्जोड में नाम दुरुस्त करने बारे प्रार्थना-पत्र।

श्री राजेश कुमार पुत्र श्री जालम सिंह, ग्राम नाया-पन्जोड ने इस न्यायालय में ब्यान हल्फी सहित एक प्रार्थना-पत्र दिया है कि उसका सही नाम राजेश कुमार पुत्र श्री जालम सिंह है जो कि ग्राम पंचायत नाया-पन्जोड के पंचायती अभिलेख में भी दर्ज है, परन्तु राजस्व रिकॉर्ड बाका मौजा नाया-पन्जोड के अभिलेख में प्रार्थी का नाम राज कुमार पुत्र जालम सिंह दर्ज है जोकि गलत है। प्रार्थी राजस्व रिकॉर्ड बाका मौजा नाया-पन्जोड में अपना नाम दुरुस्त करवाना चाहता है।

अतः आम जनता व सम्बन्धित रिश्तेदारों को इस अदालती इश्तहार द्वारा सूचित किया जाता है कि अगर इस बारा किसी को कोई उजर या एतराज हो तो वह अपने उजर या एतराज बकालत दिनांक 3-1-2015 या इससे पूर्व पेश कर सकता है। मियाद गुजरने के बाद कोई भी उजर या एतराज काबिले समायत न होगा और उपरोक्त प्रार्थना-पत्र पर आगामी कार्यवाही अमल में लाई जाएगी।

आज दिनांक 3-12-2014 को हमारे हस्ताक्षर व मोहर न्यायालय द्वारा जारी किया गया।

मोहर।

सतीश कुमार नेगी,  
सहायक समाहर्ता द्वितीय वर्ग,  
रोन्हाट, जिला सिरमौर (हि0 प्र0)।